

First Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

LLS NO. 19-0705.01 Duane Gall x4335

HOUSE BILL 19-1313

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HOUSE SPONSORSHIP

Becker and Hansen,

SENATE SPONSORSHIP

Winter and Priola,

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House Committees

Health & Insurance  
Appropriations

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING PLANS TO REDUCE CARBON DIOXIDE EMISSIONS BY  
102 QUALIFYING RETAIL UTILITIES, AND, IN CONNECTION  
103 THEREWITH, ENCOURAGING THE ACHIEVEMENT OF ZERO  
104 CARBON DIOXIDE EMISSIONS BY 2050 AND MAKING AN  
105 APPROPRIATION.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

**Section 1** of the bill repeals laws that allow an electric utility to own, as rate-based property, new eligible energy resources without

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

HOUSE  
Amended 2nd Reading  
April 25, 2019

competitive bidding if certain conditions are satisfied.

**Section 2** supplements the existing renewable energy standards statute by establishing targets for the reduction of carbon dioxide emissions from electricity generation by utilities serving more than 500,000 customers, with the opportunity for other utilities to opt in. The targets are:

- ! By 2030, an 80% reduction in carbon dioxide emission levels compared to 2005 levels; and
- ! For 2050 and thereafter, a goal of a 100% reduction in carbon dioxide emission levels.

Section 2 also directs qualifying retail utilities to submit plans to the public utilities commission (PUC) as part of their ongoing resource acquisition planning process to address the clean energy targets. A clean energy plan must detail the actions and investments the utility intends to undertake, including specifying the new resources and infrastructure proposed to be used; the anticipated effects of the plan on the safety, reliability, and resilience of the overall electric system; the methods proposed for measuring carbon dioxide reductions; and the costs of implementation, which must be reasonable.

The approval process also includes participation by the division of administration within the department of public health and environment regarding the measurement of carbon dioxide emission reductions and predictions as to whether the clean energy plan will achieve the desired reductions.

A utility implementing a clean energy plan may recover its costs of implementation through rates, as approved by the PUC, and own any generating resources and infrastructure necessary to effectuate the plan. The utility is required to use a competitive bidding process to fill the cumulative resource need identified in its next electric resource plan that includes a clean energy plan filed after January 1, 2020.

Each utility that receives approval of a clean energy plan is required to report to the governor, the PUC, and the air quality control commission on a list of matters, including its progress in implementing the plan and in reducing carbon dioxide emissions.

The bill strengthens an existing provision requiring electric resource acquisition decisions to be made with consideration of "best value" employment metrics and the use of Colorado labor by requiring a utility to obtain and provide to the PUC relevant documentation on these topics, including the availability of apprenticeship programs registered with the United States department of labor.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 40-2-114, **amend** (2)

1 as follows:

2 **40-2-114. Disposition of fees collected - telecommunications**  
3 **utility fund - fixed utility fund.** (2) Moneys in the funds created in  
4 subsection (1) of this section shall be expended only to defray the full  
5 amount determined by the general assembly for the administrative  
6 expenses of the commission for the supervision and regulation of the  
7 public utilities paying the fees; ~~and~~ for the financing of the office of  
8 consumer counsel created in article 6.5 of this title; AND FOR THE COSTS  
9 INCURRED BY ALL AGENCIES PARTICIPATING IN ANY PROCESS PURSUANT  
10 TO SECTION 40-2-125.5. The state treasurer shall retain any unexpended  
11 balance remaining in either fund at the end of any fiscal year to defray the  
12 administrative expenses of the commission during subsequent fiscal  
13 years, and the executive director of the department of revenue shall take  
14 any such unexpended balance into account when computing the  
15 percentage upon which fees for the ensuing fiscal year will be based.

16 **SECTION 2.** In Colorado Revised Statutes, 40-2-124, **amend** (1)  
17 introductory portion; and **repeal** (1)(f)(I) as follows:

18 **40-2-124. Renewable energy standards - qualifying retail and**  
19 **wholesale utilities - definitions - net metering - legislative declaration.**

20 (1) Each provider of retail electric service in the state of Colorado, other  
21 than municipally owned utilities that serve forty thousand customers or  
22 fewer, is a qualifying retail utility. Each qualifying retail utility, with the  
23 exception of cooperative electric associations that have voted to exempt  
24 themselves from commission jurisdiction pursuant to section 40-9.5-104  
25 and municipally owned utilities, is subject to the rules established under  
26 this ~~article~~ ARTICLE 2 by the commission. No additional regulatory  
27 authority is provided to the commission other than that specifically

1 contained in this section. In accordance with article 4 of title 24, C.R.S.,  
2 the commission shall revise or clarify existing rules to establish the  
3 following:

4 (f) Policies for the recovery of costs incurred with respect to these  
5 standards for qualifying retail utilities that are subject to rate regulation  
6 by the commission. These policies must provide incentives to qualifying  
7 retail utilities to invest in eligible energy resources and must include:

8 (I) ~~Allowing a qualifying retail utility to develop and own as~~  
9 ~~utility rate-based property up to twenty-five percent of the total new~~  
10 ~~eligible energy resources the utility acquires from entering into power~~  
11 ~~purchase agreements and from developing and owning resources after~~  
12 ~~March 27, 2007, if the new eligible energy resources proposed to be~~  
13 ~~developed and owned by the utility can be constructed at reasonable cost~~  
14 ~~compared to the cost of similar eligible energy resources available in the~~  
15 ~~market. The qualifying retail utility shall be allowed to develop and own~~  
16 ~~as utility rate-based property more than twenty-five percent but not more~~  
17 ~~than fifty percent of total new eligible energy resources acquired after~~  
18 ~~March 27, 2007, if the qualifying retail utility shows that its proposal~~  
19 ~~would provide significant economic development, employment, energy~~  
20 ~~security, or other benefits to the state of Colorado. The qualifying retail~~  
21 ~~utility may develop and own these resources either by itself or jointly with~~  
22 ~~other owners, and, if owned jointly, the entire jointly owned resource~~  
23 ~~shall count toward the percentage limitations in this subparagraph (I). For~~  
24 ~~the resources addressed in this subparagraph (I), the qualifying retail~~  
25 ~~utility shall not be required to comply with the competitive bidding~~  
26 ~~requirements of the commission's rules; except that nothing in this~~  
27 ~~subparagraph (I) shall preclude the qualifying retail utility from bidding~~

1 ~~to own a greater percentage of new eligible energy resources than~~  
2 ~~permitted by this subparagraph (I). In addition, nothing in this~~  
3 ~~subparagraph (I) shall prevent the commission from waiving, repealing,~~  
4 ~~or revising any commission rule in a manner otherwise consistent with~~  
5 ~~applicable law.~~

6 **SECTION 3.** In Colorado Revised Statutes, **add** 40-2-125.5 as  
7 follows:

8 **40-2-125.5. Carbon dioxide emission reductions - goal to**  
9 **eliminate by 2050 - legislative declaration - interim targets -**  
10 **submission and approval of plans - definitions - cost recovery -**  
11 **reports. (1) Legislative declaration.** THE GENERAL ASSEMBLY FINDS  
12 AND DECLARES THAT:

13 (a) IT IS A MATTER OF STATEWIDE IMPORTANCE TO PROMOTE THE  
14 DEVELOPMENT OF COST-EFFECTIVE CLEAN ENERGY AND NEW  
15 TECHNOLOGIES AND REDUCE THE CARBON DIOXIDE EMISSIONS FROM THE  
16 COLORADO ELECTRIC GENERATING SYSTEM;

17 (b) THE CREATION OF A LOW-COST, RELIABLE, AND CLEAN  
18 ELECTRICITY SYSTEM IS CRITICAL TO ACHIEVING THE LEVEL OF  
19 GREENHOUSE GAS EMISSIONS NECESSARY TO AVOID THE WORST IMPACTS  
20 OF CLIMATE CHANGE AND ADVANCING A ROBUST AND EFFICIENT  
21 LOW-CARBON ECONOMY FOR THE STATE OF COLORADO AND THE NATION;

22 (c) TECHNOLOGY ADVANCEMENT HAS ALREADY ALLOWED  
23 COLORADO TO ACHIEVE REDUCTIONS IN CARBON DIOXIDE EMISSIONS FROM  
24 THE ELECTRIC UTILITY SECTOR, AND CONTINUED TECHNOLOGY  
25 DEVELOPMENT IS KEY TO EXTEND PROGRESS TOWARD A RELIABLE,  
26 LOW-COST, CLEAN ENERGY FUTURE; ■

27 (d) ALTERNATIVE FINANCING MECHANISMS MAY RESULT IN LOWER

1 COSTS TO ELECTRIC UTILITY CUSTOMERS; THEREFORE, IT IS HELPFUL TO  
2 PROVIDE ALTERNATIVE FINANCING MECHANISMS THAT UTILITIES MAY USE  
3 TO REDUCE THE TOTAL AMOUNT OF COSTS BEING INCLUDED IN CUSTOMER  
4 RATES RESULTING FROM ACCELERATING THE RETIREMENT OF ELECTRIC  
5 GENERATING FACILITIES; AND

6 (e) A BOLD CLEAN ENERGY POLICY WILL SUPPORT THIS PROGRESS  
7 AND ALLOW COLORADANS TO ENJOY THE BENEFITS OF RELIABLE CLEAN  
8 ENERGY AT AN AFFORDABLE COST.

9 (2) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT  
10 OTHERWISE REQUIRES:

11 (a) "CLEAN ENERGY PLAN" MEANS A PLAN FILED BY A QUALIFYING  
12 RETAIL UTILITY AS PART OF ITS ELECTRIC RESOURCE PLAN TO REDUCE THE  
13 QUALIFYING RETAIL UTILITY'S CARBON DIOXIDE EMISSIONS ASSOCIATED  
14 WITH ELECTRICITY SALES TO THE QUALIFYING RETAIL UTILITY'S  
15 ELECTRICITY CUSTOMERS BY EIGHTY PERCENT FROM 2005 LEVELS BY  
16 2030, AND THAT SEEKS TO ACHIEVE PROVIDING ITS CUSTOMERS WITH  
17 ENERGY GENERATED FROM ONE-HUNDRED-PERCENT CLEAN ENERGY  
18 RESOURCES BY 2050.

19 (b) "CLEAN ENERGY RESOURCE" MEANS ANY  
20 ELECTRICITY-GENERATING TECHNOLOGY THAT GENERATES OR STORES  
21 ELECTRICITY WITHOUT EMITTING CARBON DIOXIDE INTO THE ATMOSPHERE.  
22 CLEAN ENERGY RESOURCES INCLUDE, WITHOUT LIMITATION, ELIGIBLE  
23 ENERGY RESOURCES AS DEFINED IN SECTION 40-2-124 (1)(a).

24 (c) "QUALIFYING RETAIL UTILITY" MEANS A RETAIL UTILITY  
25 PROVIDING ELECTRIC SERVICE TO MORE THAN FIVE HUNDRED THOUSAND  
26 CUSTOMERS IN THIS STATE OR ANY OTHER ELECTRIC UTILITY THAT OPTS IN  
27 PURSUANT TO SUBSECTION (3)(b) OF THIS SECTION.

1           (3) **Clean energy targets.** (a) IN ADDITION TO THE OTHER  
2 REQUIREMENTS OF THIS SECTION, A QUALIFYING RETAIL UTILITY SHALL  
3 MEET THE FOLLOWING CLEAN ENERGY TARGETS:

4           (I) BY 2030, THE QUALIFYING RETAIL UTILITY SHALL REDUCE THE  
5 CARBONDIOXIDE EMISSIONS ASSOCIATED WITH ELECTRICITY SALES TO THE  
6 QUALIFYING RETAIL UTILITY'S █ ELECTRICITY CUSTOMERS BY EIGHTY  
7 PERCENT FROM 2005 LEVELS.

8           (II) FOR THE YEARS 2050 AND THEREAFTER, OR SOONER IF  
9 PRACTICABLE, THE QUALIFYING RETAIL UTILITY SHALL SEEK TO ACHIEVE  
10 THE GOAL OF PROVIDING ITS █ CUSTOMERS WITH ENERGY GENERATED  
11 FROM ONE-HUNDRED-PERCENT CLEAN ENERGY RESOURCES SO LONG AS  
12 DOING SO IS TECHNICALLY AND ECONOMICALLY FEASIBLE, IN THE PUBLIC  
13 INTEREST, AND CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION.

14           (III) THE QUALIFYING RETAIL UTILITY SHALL RETIRE RENEWABLE  
15 ENERGY CREDITS ESTABLISHED UNDER SECTION 40-2-124 (1)(d), IN THE  
16 YEAR GENERATED, BY ANY ELIGIBLE ENERGY RESOURCES USED TO COMPLY  
17 WITH THE REQUIREMENTS OF THIS SECTION.

18           (b) ANY OTHER ELECTRIC PUBLIC UTILITY MAY OPT INTO THE FULL  
19 TERMS OF THIS ENTIRE SECTION UPON NOTIFICATION TO THE COMMISSION.

20           (4) **Submission and approval of plans.** (a) THE FIRST ELECTRIC  
21 RESOURCE PLAN THAT A QUALIFYING RETAIL UTILITY FILES WITH THE  
22 COMMISSION AFTER JANUARY 1, 2020, MUST INCLUDE A CLEAN ENERGY  
23 PLAN THAT WILL ACHIEVE THE CLEAN ENERGY TARGET SET FORTH IN  
24 SUBSECTION (3)(a)(I) OF THIS SECTION AND MAKE PROGRESS TOWARD THE  
25 ONE-HUNDRED-PERCENT CLEAN ENERGY GOAL SET FORTH IN SUBSECTION  
26 (3)(a)(II) OF THIS SECTION IN ACCORDANCE WITH THE FOLLOWING:

27           (I) THE ELECTRIC RESOURCE PLAN CONTAINING THE CLEAN

1 ENERGY PLAN MUST UTILIZE A RESOURCE ACQUISITION PERIOD THAT  
2 EXTENDS THROUGH 2030.

3 (II) THE CLEAN ENERGY PLAN SUBMITTED TO THE COMMISSION  
4 MUST SET FORTH A PLAN OF ACTIONS AND INVESTMENTS BY THE  
5 QUALIFYING RETAIL UTILITY PROJECTED TO ACHIEVE COMPLIANCE WITH  
6 THE CLEAN ENERGY TARGETS IN SUBSECTIONS (3)(a)(I) AND (3)(a)(II) OF  
7 THIS SECTION AND THAT RESULT IN AN AFFORDABLE, RELIABLE, AND  
8 CLEAN ELECTRIC SYSTEM.

9 (III) IN THE ELECTRIC RESOURCE PLAN THAT INCLUDES THE CLEAN  
10 ENERGY PLAN, THE QUALIFYING RETAIL UTILITY SHALL CLEARLY  
11 DISTINGUISH BETWEEN THE SET OF RESOURCES NECESSARY TO MEET  
12 CUSTOMER DEMANDS IN THE RESOURCE ACQUISITION PERIOD AND THE  
13 ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES THAT MAY BE UNDERTAKEN  
14 TO MEET THE CLEAN ENERGY TARGET IN SUBSECTION (3)(a)(I) OF THIS  
15 SECTION, WHICH MAY CREATE AN ADDITIONAL RESOURCE NEED FOR THE  
16 CLEAN ENERGY PLAN. THESE ACTIVITIES MAY INCLUDE RETIREMENT OF  
17 EXISTING GENERATING FACILITIES, CHANGES IN SYSTEM OPERATION, OR  
18 ANY OTHER NECESSARY ACTIONS.

19 (IV) AFTER CONDUCTING ANY PROCUREMENT PROCESS PURSUANT  
20 TO SUBSECTION (5)(b) OF THIS SECTION OR OTHERWISE, THE QUALIFYING  
21 RETAIL UTILITY SHALL SET FORTH THE ACTIONS AND INVESTMENTS  
22 REQUIRED TO FILL THE ADDITIONAL RESOURCE NEED IDENTIFIED FOR THE  
23 CLEAN ENERGY PLAN TO SATISFY THE CLEAN ENERGY TARGET IN  
24 SUBSECTION (3)(a)(I) OF THIS SECTION. THESE ACTIONS AND INVESTMENTS  
25 MAY INCLUDE DEVELOPMENT OF NEW CLEAN ENERGY RESOURCES,  
26 DEVELOPMENT OF NEW TRANSMISSION AND OTHER SUPPORTING  
27 INFRASTRUCTURE, AND CLEAN ENERGY RESOURCE ACQUISITIONS. ANY



1 NEW TRANSMISSION DEVELOPMENT IS SUBJECT TO EXISTING COMMISSION  
2 AND STAKEHOLDER TRANSMISSION PLANNING PROCESSES, AS APPLICABLE.

3 (V) THE CLEAN ENERGY PLAN MUST DESCRIBE THE EFFECT OF THE  
4 ACTIONS AND INVESTMENTS INCLUDED IN THE CLEAN ENERGY PLAN ON  
5 THE SAFETY, RELIABILITY, RENEWABLE ENERGY INTEGRATION, AND  
6 RESILIENCE OF ELECTRIC SERVICE IN THE STATE OF COLORADO.

7 (VI) THE CLEAN ENERGY PLAN MUST SET FORTH THE PROJECTED  
8 COST OF ITS IMPLEMENTATION AND ANTICIPATED REDUCTIONS IN CARBON  
9 DIOXIDE AND OTHER EMISSIONS.

10 (VII) IF THE CLEAN ENERGY PLAN INCLUDES ACCELERATED  
11 RETIREMENT OF ANY EXISTING GENERATING FACILITIES, THE CLEAN  
12 ENERGY PLAN MUST INCLUDE A WORKFORCE TRANSITION PLAN FOR  
13 UTILITY WORKERS IMPACTED BY ANY CLEAN ENERGY PLAN, AND THE  
14 QUALIFYING RETAIL UTILITY MAY PROPOSE A COST-RECOVERY MECHANISM  
15 TO RECOVER THE PRUDENTLY INCURRED COSTS OF ANY WORKFORCE  
16 TRANSITION PLAN. THE WORKFORCE TRANSITION PLAN MUST INCLUDE, TO  
17 THE EXTENT FEASIBLE, ESTIMATES OF:

18 (A) THE NUMBER OF WORKERS EMPLOYED BY THE UTILITY OR A  
19 CONTRACTOR OF THE UTILITY AT THE ELECTRIC GENERATING FACILITY;

20 (B) THE TOTAL NUMBER OF EXISTING WORKERS WITH JOBS THAT  
21 WILL BE RETAINED AND THE TOTAL NUMBER OF EXISTING WORKERS WITH  
22 JOBS THAT WILL BE ELIMINATED DUE TO THE RETIREMENT OF THE  
23 ELECTRIC GENERATING FACILITY;

24 (C) WITH RESPECT TO THE EXISTING WORKERS WITH JOBS THAT  
25 WILL BE ELIMINATED DUE TO THE RETIREMENT OF THE ELECTRIC  
26 GENERATING FACILITY, THE TOTAL NUMBER AND NUMBER BY JOB  
27 CLASSIFICATION OF WORKERS FOR WHOM: EMPLOYMENT WILL END

1 WITHOUT BEING OFFERED OTHER EMPLOYMENT BY THE UTILITY; THE  
2 WORKERS WILL RETIRE AS PLANNED, BE OFFERED EARLY RETIREMENT, OR  
3 LEAVE VOLUNTARILY; THE WORKERS WILL BE RETAINED BY BEING  
4 TRANSFERRED TO OTHER ELECTRIC GENERATING FACILITIES OR OFFERED  
5 OTHER EMPLOYMENT BY THE UTILITY; AND THE WORKERS WILL BE  
6 RETAINED TO CONTINUE TO WORK FOR THE UTILITY IN A NEW JOB  
7 CLASSIFICATION;

8 (D) IF THE UTILITY IS REPLACING THE ELECTRIC GENERATING  
9 FACILITY BEING RETIRED WITH A NEW ELECTRIC GENERATING FACILITY:  
10 THE NUMBER OF WORKERS FROM THE RETIRED ELECTRIC GENERATING  
11 FACILITY THAT WILL BE OFFERED EMPLOYMENT AT THE NEW ELECTRIC  
12 GENERATING FACILITY; AND THE NUMBER OF JOBS AT THE NEW ELECTRIC  
13 GENERATING FACILITY THAT WILL BE OUTSOURCED TO SUBCONTRACTORS.  
14 THE UTILITY SHALL DEVELOP A TRAINING OR APPRENTICESHIP PROGRAM,  
15 UNDER THE TERMS OF AN APPLICABLE COLLECTIVE BARGAINING  
16 AGREEMENT, IF ANY, FOR THE MAINTENANCE AND OPERATION OF ANY NEW  
17 COMBINATION GENERATION AND STORAGE FACILITY OWNED BY THE  
18 UTILITY THAT DOES NOT EMIT CARBON DIOXIDE, TO WHICH FACILITY  
19 DISPLACED WORKERS MAY TRANSFER AS APPROPRIATE.

20 (VIII) IF THE MINIMUM AMOUNTS OF ELECTRICITY FROM ELIGIBLE  
21 ENERGY RESOURCES SET FORTH IN SECTION 40-2-124 (1)(c) ARE  
22 SATISFIED, A QUALIFYING RETAIL UTILITY MAY PROPOSE TO USE UP TO  
23 ONE-HALF OF THE FUNDS COLLECTED ANNUALLY UNDER SECTION 40-2-124  
24 (1)(g), AS WELL AS ANY ACCRUED FUNDS, TO RECOVER THE INCREMENTAL  
25 COST OF CLEAN ENERGY RESOURCES AND THEIR DIRECTLY RELATED  
26 INTERCONNECTION FACILITIES. THE UTILITY MAY ACCOUNT FOR THESE  
27 FUNDS IN CALCULATING THE COST OF THE PLAN.

1 (b) THE DIVISION OF ADMINISTRATION IN THE DEPARTMENT OF  
2 PUBLIC HEALTH AND ENVIRONMENT SHALL PARTICIPATE IN ANY  
3 PROCEEDING SEEKING APPROVAL OF A CLEAN ENERGY PLAN DEVELOPED  
4 BY A QUALIFYING RETAIL UTILITY PURSUANT TO THIS SECTION. THE  
5 DIVISION SHALL DESCRIBE THE METHODS OF MEASURING CARBON DIOXIDE  
6 EMISSIONS AND SHALL VERIFY THE PROJECTED CARBON DIOXIDE EMISSION  
7 REDUCTIONS AS A RESULT OF THE CLEAN ENERGY PLAN.

8 (c) AFTER CONSULTING WITH THE AIR QUALITY CONTROL  
9 COMMISSION, THE DIVISION OF ADMINISTRATION SHALL DETERMINE  
10 WHETHER A CLEAN ENERGY PLAN AS FILED UNDER THIS SECTION WILL  
11 RESULT IN AN EIGHTY-PERCENT REDUCTION, RELATIVE TO 2005 LEVELS,  
12 IN CARBON DIOXIDE EMISSIONS FROM THE QUALIFYING RETAIL UTILITY'S  
13 COLORADO ELECTRICITY SALES BY 2030 AND IS OTHERWISE CONSISTENT  
14 WITH ANY GREENHOUSE GAS EMISSION REDUCTION GOALS ESTABLISHED  
15 BY THE STATE OF COLORADO. THE DIVISION SHALL PUBLISH, AND SHALL  
16 REPORT TO THE PUBLIC UTILITIES COMMISSION, THE DIVISION'S  
17 CALCULATION OF CARBON DIOXIDE EMISSION REDUCTIONS ATTRIBUTABLE  
18 TO ANY APPROVED CLEAN ENERGY PLAN. NOTHING IN THE DIVISION'S  
19 ENGAGEMENT IN THIS PROCESS SHALL BE CONSTRUED TO DIMINISH OR  
20 OVERRIDE THE COMMISSION'S AUTHORITY UNDER THIS TITLE 40.

21 (d) THE COMMISSION SHALL APPROVE THE CLEAN ENERGY PLAN IF  
22 THE COMMISSION FINDS IT TO BE IN THE PUBLIC INTEREST AND CONSISTENT  
23 WITH THE CLEAN ENERGY TARGET IN SUBSECTION (3)(a)(I) OF THIS  
24 SECTION, AND THE COMMISSION MAY MODIFY THE PLAN IF THE  
25 MODIFICATION IS NECESSARY TO ENSURE THAT THE PLAN IS IN THE PUBLIC  
26 INTEREST. IN EVALUATING WHETHER A CLEAN ENERGY PLAN SUBMITTED  
27 TO THE COMMISSION IS IN THE PUBLIC INTEREST, THE COMMISSION SHALL

1 CONSIDER THE FOLLOWING FACTORS, AMONG OTHER RELEVANT FACTORS  
2 AS DEFINED BY THE COMMISSION:

3 (I) REDUCTIONS IN CARBON DIOXIDE AND OTHER EMISSIONS THAT  
4 WILL BE ACHIEVED THROUGH THE CLEAN ENERGY PLAN AND THE  
5 ENVIRONMENTAL AND HEALTH BENEFITS OF THOSE REDUCTIONS;

6 (II) THE FEASIBILITY OF THE CLEAN ENERGY PLAN AND THE CLEAN  
7 ENERGY PLAN'S IMPACT ON THE RELIABILITY AND RESILIENCE OF THE  
8 ELECTRIC SYSTEM. THE COMMISSION SHALL NOT APPROVE ANY PLAN THAT  
9 DOES NOT PROTECT SYSTEM RELIABILITY.

10 (III) WHETHER THE CLEAN ENERGY PLAN WILL RESULT IN A  
11 REASONABLE COST TO CUSTOMERS, AS EVALUATED ON A NET PRESENT  
12 VALUE BASIS. IN EVALUATING THE COST IMPACTS OF THE CLEAN ENERGY  
13 PLAN, THE COMMISSION SHALL CONSIDER THE EFFECT ON CUSTOMERS OF  
14 THE PROJECTED COSTS ASSOCIATED WITH THE PLAN AS SET FORTH IN  
15 SUBSECTION (4)(a)(VI) OF THIS SECTION AS WELL AS ANY PROJECTED  
16 SAVINGS ASSOCIATED WITH THE PLAN, INCLUDING PROJECTED AVOIDED  
17 FUEL COSTS.

18 (e) IF THE COMMISSION FINDS THAT APPROVAL OF THE CLEAN  
19 ENERGY PLAN IS NOT IN THE PUBLIC INTEREST, OR IF THE COMMISSION  
20 MODIFIES THE PLAN, THE UTILITY MAY CHOOSE TO SUBMIT AN AMENDED  
21 PLAN TO THE COMMISSION FOR APPROVAL IN LIEU OF HAVING NO PLAN OR  
22 IMPLEMENTING THE MODIFIED PLAN. NO CLEAN ENERGY PLAN IS  
23 EFFECTIVE WITHOUT COMMISSION APPROVAL, AND A QUALIFYING RETAIL  
24 UTILITY SHALL NOT BE REQUIRED TO SUBMIT MORE THAN ONE PLAN FOR  
25 COMMISSION APPROVAL.

26 (5) **Regulatory matters. (a) Ensuring retail rate stability.**

27 (I) THE COMMISSION SHALL ESTABLISH A MAXIMUM ELECTRIC RETAIL

1 RATE IMPACT OF ONE AND ONE-HALF PERCENT OF THE TOTAL ELECTRIC  
2 BILL ANNUALLY FOR EACH CUSTOMER FOR IMPLEMENTATION OF THE  
3 APPROVED ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES, CONSISTENT  
4 WITH THIS SUBSECTION (5). NOTHING IN THIS SUBSECTION (5)(a)  
5 SUPERSEDES SUBSECTION (3)(a)(I) OF THIS SECTION.

6 (II) A QUALIFYING RETAIL UTILITY SHALL COLLECT REVENUES FOR  
7 THE ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES THROUGH A CLEAN  
8 ENERGY PLAN REVENUE RIDER ASSESSED ON A PERCENTAGE BASIS ON ALL  
9 RETAIL CUSTOMER BILLS, AS DEEMED PRUDENT BY THE COMMISSION. THE  
10 REVENUE RIDER MAY BE ESTABLISHED AS EARLY AS THE YEAR FOLLOWING  
11 APPROVAL OF A CLEAN ENERGY PLAN BY THE COMMISSION, AND THE  
12 QUALIFYING RETAIL UTILITY MAY PROPOSE A COMMENCEMENT DATE AND  
13 LEVEL NO GREATER THAN THE MAXIMUM ELECTRIC RETAIL RATE IMPACT.  
14 THE REVENUE RIDER SHALL AFFORD THE QUALIFYING RETAIL UTILITY COST  
15 RECOVERY TREATMENT UP TO THE MAXIMUM ELECTRIC RETAIL RATE  
16 IMPACT UNTIL THE FIRST RATE CASE FOLLOWING THE FINAL  
17 IMPLEMENTATION OF THE CLEAN ENERGY PLAN, AT WHICH TIME THE  
18 REMAINING COSTS AND SAVINGS ASSOCIATED WITH THE CLEAN ENERGY  
19 PLAN WILL BE INCORPORATED INTO BASE RATES. THE QUALIFYING RETAIL  
20 UTILITY MAY PROPOSE TO ADJUST THE LEVEL OF THE RETAIL RATE RIDER  
21 OVER TIME SO LONG AS IT DOES NOT EXCEED THE MAXIMUM RETAIL RATE  
22 IMPACT AND AS DEEMED PRUDENT BY THE COMMISSION. NOTHING IN THIS  
23 SUBSECTION (5) AFFECTS THE COMMISSION'S AUTHORITY TO EVALUATE  
24 THE PRUDENCE OF COSTS ASSOCIATED WITH APPROVED CLEAN ENERGY  
25 PLAN ACTIVITIES.

26 (III) THE CLEAN ENERGY PLAN REVENUE RIDER WILL BE UTILIZED  
27 FOR COSTS OF A QUALIFYING RETAIL UTILITY'S CLEAN ENERGY PLAN

1 CAPITAL INVESTMENTS AND OPERATING AND RELATED EXPENSES,  
2 EXCLUSIVE OF:

3 (A) FUEL AND TRANSMISSION COSTS;

4 (B) COSTS ASSOCIATED WITH THE CAPITAL INVESTMENTS AND  
5 OPERATING AND RELATED EXPENSES WITHIN THE OVERALL APPROVED  
6 RESOURCE PORTFOLIO NECESSARY TO FULLY SATISFY THE RESOURCE NEED  
7 IDENTIFIED FOR THE ELECTRIC RESOURCE PLAN WITHOUT THE CLEAN  
8 ENERGY PLAN;

9 (C) THE INCREMENTAL COSTS OF ELIGIBLE ENERGY RESOURCES  
10 RECOVERED WITH FUNDS COLLECTED UNDER SECTION 40-2-124 (1)(g);  
11 AND

12 (D) THE INCREMENTAL COSTS OF ANY CLEAN ENERGY RESOURCES  
13 AND THEIR DIRECTLY RELATED INTERCONNECTION FACILITIES THAT,  
14 SUBJECT TO COMMISSION APPROVAL, ARE RECOVERED WITH FUNDS  
15 COLLECTED UNDER SECTION 40-2-124 (1)(g) IN ACCORDANCE WITH  
16 SUBSECTION (4)(a)(VIII) OF THIS SECTION. SAVINGS ASSOCIATED WITH  
17 THE PLAN WILL RETURN TO CUSTOMERS THROUGH EXISTING RATE RIDERS  
18 AND BASE RATE ADJUSTMENTS.

19 (IV) THE CLEAN ENERGY PLAN REVENUE RIDER SHALL AFFORD  
20 CUSTOMERS CERTAINTY ON THE MAXIMUM RATE IMPACT OF THE  
21 APPROVED ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES THROUGH AT  
22 LEAST CALENDAR YEAR 2030. ANNUALLY, THE QUALIFYING RETAIL  
23 UTILITY SHALL FILE A REPORT WITH THE COMMISSION INDICATING, AT A  
24 MINIMUM:

25 (A) THE AMOUNT OF RIDER COLLECTIONS;

26 (B) THE REVENUE REQUIREMENT ASSOCIATED WITH THE APPROVED  
27 ADDITIONAL CLEAN ENERGY PLAN ACTIVITIES TO BE PAID FOR FROM THE

1 RIDER COLLECTIONS;

2 (C) ANY POSITIVE OR NEGATIVE RIDER ACCOUNT BALANCE;

3 (D) INTEREST EXPENSE ASSOCIATED WITH THE REVENUE RIDER

4 BALANCE; AND

5 (E) ANY OTHER INFORMATION REQUIRED BY THE COMMISSION.

6 (V) IN THE FIRST RATE CASE FOLLOWING THE FINAL

7 IMPLEMENTATION OF THE CLEAN ENERGY PLAN, THE COMMISSION SHALL

8 CONDUCT A FINAL RECONCILIATION OF THE CLEAN ENERGY PLAN REVENUE

9 RIDER AND DETERMINE HOW TO ACCOUNT FOR ANY POSITIVE OR NEGATIVE

10 RIDER BALANCE. IN THE MANNER DETERMINED BY THE COMMISSION, ANY

11 REMAINING POSITIVE BALANCE SHALL BE RETURNED TO CUSTOMERS OR

12 USED TO REDUCE CUSTOMER RATES AND ANY NEGATIVE BALANCE SHALL

13 BE INCORPORATED INTO THE QUALIFYING RETAIL UTILITY'S RATES.

14 (b) THE QUALIFYING RETAIL UTILITY SHALL UTILIZE A

15 COMPETITIVE BIDDING PROCESS, AS DEFINED BY THE COMMISSION IN

16 RULES, TO PROCURE ANY ENERGY RESOURCES TO FILL THE CUMULATIVE

17 RESOURCE NEED DERIVED FROM THE ELECTRIC RESOURCE PLAN AND THE

18 CLEAN ENERGY PLAN IN SUBSECTION (4)(a)(III) OF THIS SECTION. THE

19 COMMISSION SHALL ALLOW THE QUALIFYING RETAIL UTILITY, INCLUSIVE

20 OF ANY OWNERSHIP BY ITS AFFILIATES, TO OWN A TARGET OF FIFTY

21 PERCENT OF THE ENERGY AND CAPACITY ASSOCIATED WITH THE CLEAN

22 ENERGY RESOURCES AND ANY OTHER ENERGY RESOURCES DEVELOPED OR

23 ACQUIRED TO MEET THE RESOURCE NEED, AS WELL AS ALL ASSOCIATED

24 INFRASTRUCTURE, IF THE COMMISSION FINDS THE COST OF UTILITY OR

25 AFFILIATE OWNERSHIP OF THE GENERATION ASSETS COMES AT A

26 REASONABLE COST AND RATE IMPACT. UTILITY OWNERSHIP MAY COME

27 FROM UTILITY OR AFFILIATE SELF-BUILDS, BUILD-TRANSFERS FROM

1 INDEPENDENT POWER PRODUCERS, OR SALES OF EXISTING ASSETS FROM  
2 INDEPENDENT POWER PRODUCERS OR SIMILAR COMMERCIAL  
3 ARRANGEMENTS. ■ ■

4 (c) ANY ACTIONS, INCLUDING TRANSMISSION DEVELOPMENT,  
5 TAKEN BY THE QUALIFYING RETAIL UTILITY SHALL BE PRESUMED PRUDENT  
6 TO THE EXTENT THOSE ACTIONS ARE CONSISTENT WITH THE  
7 IMPLEMENTATION OF AN APPROVED CLEAN ENERGY PLAN.

8 (d) FOR THE PURPOSES OF THIS SECTION, THE CLEAN ENERGY  
9 TARGET EVALUATION WILL BE BASED UPON THE QUALIFYING RETAIL  
10 UTILITY'S ELECTRICITY SALES WITHIN ITS ELECTRIC SERVICE TERRITORY  
11 AS IT EXISTED ON JANUARY 1, 2019. IN THE EVENT OF A SIGNIFICANT  
12 ACQUISITION, THE QUALIFYING RETAIL UTILITY MAY FILE WITHIN ONE  
13 YEAR AFTER THE ACQUISITION AN ADDITIONAL CLEAN ENERGY PLAN TO  
14 ADDRESS THAT ACQUISITION, AND THE COMMISSION SHALL CONSIDER THE  
15 ADDITIONAL CLEAN ENERGY PLAN CONSISTENT WITH THE GOALS OF THIS  
16 SECTION.

17 (e) THE COMMISSION MAY, ON ITS OWN MOTION OR UPON  
18 APPLICATION BY A QUALIFYING RETAIL UTILITY, AMEND AN APPROVED  
19 CLEAN ENERGY PLAN IF AMENDMENT IS NECESSARY TO ENSURE THE  
20 RELIABILITY AND RESILIENCY OF THE ELECTRIC SYSTEM. THE COMMISSION  
21 MAY REQUIRE THE QUALIFYING RETAIL UTILITY TO PROVIDE SUCH  
22 PERIODIC REPORTS ON THE RELIABILITY AND RESILIENCY OF THE ELECTRIC  
23 SYSTEM AS IT MAY DEEM APPROPRIATE TO ENSURE THE CLEAN ENERGY  
24 PLAN DOES NOT ADVERSELY IMPACT RELIABILITY OR RESILIENCY.

25 (f) (I) A CLEAN ENERGY PLAN VOLUNTARILY FILED BY A  
26 MUNICIPAL UTILITY OR A COOPERATIVE ELECTRIC ASSOCIATION THAT HAS  
27 VOTED TO EXEMPT ITSELF FROM REGULATION BY THE COMMISSION



1 PURSUANT TO ARTICLE 9.5 OF THIS TITLE 40 SHALL BE DEEMED APPROVED  
2 BY THE COMMISSION AS FILED IF:

3 (A) THE DIVISION OF ADMINISTRATION, IN CONSULTATION WITH  
4 THE COMMISSION, VERIFIES THAT THE PLAN DEMONSTRATES THAT, BY  
5 2030, THE MUNICIPAL UTILITY OR COOPERATIVE ELECTRIC ASSOCIATION  
6 WILL ACHIEVE AT LEAST AN EIGHTY PERCENT REDUCTION IN GREENHOUSE  
7 GAS EMISSIONS CAUSED BY THE ENTITY'S COLORADO ELECTRICITY SALES  
8 RELATIVE TO 2005 LEVELS; AND

9 (B) THE CLEAN ENERGY PLAN HAS PREVIOUSLY BEEN APPROVED  
10 BY A VOTE OF THE ENTITY'S GOVERNING BODY.

11 (II) VOLUNTARY SUBMISSION OF A CLEAN ENERGY PLAN BY A  
12 MUNICIPAL UTILITY OR A COOPERATIVE ELECTRIC ASSOCIATION DOES NOT  
13 ALTER THE ENTITY'S REGULATORY STATUS WITH RESPECT TO THE  
14 COMMISSION, INCLUDING UNDER ARTICLE 9.5 OF THIS TITLE 40.

15 (g) NOTHING IN THIS SUBSECTION (5) PRECLUDES THE USE OF  
16 BONDS AS A MECHANISM FOR RECOVERING UTILITY CAPITAL IN A RETIRED  
17 ELECTRIC GENERATING FACILITY.

18 (6) **Reports.** ONE YEAR AFTER APPROVAL OF ANY ELECTRIC  
19 RESOURCE PLAN THAT INCORPORATES A CLEAN ENERGY PLAN, THE  
20 QUALIFYING RETAIL UTILITY SHALL PREPARE A REPORT TO THE GOVERNOR,  
21 THE GENERAL ASSEMBLY, THE PUBLIC UTILITIES COMMISSION, AND THE AIR  
22 QUALITY CONTROL COMMISSION OUTLINING PROGRESS TOWARD THE  
23 CLEAN ENERGY TARGETS SET FORTH IN THIS SECTION. THE REPORT MUST  
24 SET FORTH THE CLEAN ENERGY RESOURCES DEVELOPED UNDER ANY CLEAN  
25 ENERGY PLAN, THE COST AND CUSTOMER IMPACT OF THOSE CLEAN ENERGY  
26 RESOURCES, THE EFFECT OF ANY APPROVED CLEAN ENERGY PLAN ON  
27 SYSTEM RELIABILITY, AND ANY OTHER RELEVANT INFORMATION. THE

1 REPORT MUST ALSO IDENTIFY THE NEED FOR NEW OR ADDITIONAL  
2 TECHNOLOGY DEVELOPMENT NECESSARY TO ACHIEVE THE CLEAN ENERGY  
3 TARGETS OF THIS SECTION.

4 (7) **Future electric resource plans.** ANY ELECTRIC RESOURCE  
5 PLAN SUBMITTED TO THE COMMISSION AFTER APPROVAL OF THE CLEAN  
6 ENERGY PLAN MUST INCLUDE AN UPDATE ON THE PROGRESS MADE  
7 TOWARD THE APPROVED CLEAN ENERGY PLAN, AS WELL AS ACTIONS AND  
8 INVESTMENTS BY THE QUALIFYING RETAIL UTILITY PROJECTED TO ACHIEVE  
9 COMPLIANCE WITH THE EMISSION REDUCTION TARGET IDENTIFIED IN  
10 SUBSECTION (3)(a)(I) OF THIS SECTION AND MAKE PROGRESS TOWARD THE  
11 ONE-HUNDRED-PERCENT CLEAN ENERGY GOAL SET FORTH IN SUBSECTION  
12 (3)(a)(II) OF THIS SECTION. THE COMMISSION MAY SOLICIT INPUT FROM  
13 THE DIVISION OF ADMINISTRATION FOR ASSISTANCE IN EVALUATING THE  
14 EMISSION REDUCTIONS ASSOCIATED WITH ANY FUTURE ELECTRIC  
15 RESOURCE PLAN AND CONSISTENT WITH THE CLEAN ENERGY TARGETS OF  
16 THIS SECTION. THE COMMISSION SHALL REVIEW THE QUALIFYING RETAIL  
17 UTILITY'S ACTIONS AND INVESTMENTS IN ACCORDANCE WITH THE  
18 STANDARDS SET FORTH IN SUBSECTION (4)(d) OF THIS SECTION.

19 (8) **Regional transmission investigation.** THE COMMISSION  
20 SHALL OPEN AN INVESTIGATORY PROCEEDING FOR PURPOSES OF  
21 EVALUATING AND CONSIDERING THE COSTS AND BENEFITS ASSOCIATED  
22 WITH REGIONAL TRANSMISSION ORGANIZATIONS, ENERGY IMBALANCE  
23 MARKETS, JOINT TARIFFS, AND POWER POOLS.

24 **SECTION 4.** In Colorado Revised Statutes, **amend** 40-2-129 as  
25 follows:

26 **40-2-129. New resource acquisitions - factors in determination**  
27 **- local employment - "best value" metrics.** (1) (a) When evaluating

1 electric resource acquisitions and requests for a certificate of convenience  
2 and necessity for construction or expansion of generating facilities,  
3 including but not limited to pollution control or fuel conversion upgrades  
4 and conversion of existing coal-fired plants to natural gas plants, the  
5 commission shall consider, ~~on a qualitative basis, factors that affect~~  
6 ~~employment and~~ IN ALL DECISIONS INVOLVED IN ELECTRIC RESOURCE  
7 ACQUISITION PROCESSES, BEST VALUE REGARDING EMPLOYMENT OF  
8 COLORADO LABOR, AS DEFINED IN SECTION 8-17-101 (2)(a), AND POSITIVE  
9 IMPACTS ON the long-term economic viability of Colorado communities.  
10 To this end, the commission shall require utilities to ~~request~~ OBTAIN AND  
11 PROVIDE TO THE COMMISSION the following information regarding "best  
12 value" employment metrics: The availability of training programs,  
13 including training through apprenticeship programs registered with the  
14 United States department of ~~labor~~, LABOR'S office of apprenticeship and  
15 training OR BY STATE APPRENTICESHIP COUNCILS RECOGNIZED BY THAT  
16 OFFICE; employment of Colorado ~~workers~~ LABOR as compared to  
17 importation of out-of-state workers; long-term career opportunities; and  
18 industry-standard wages, health care, and pension benefits. When a utility  
19 proposes to construct new facilities of its own, the utility shall supply  
20 similar information to the commission.

21 (b) ANY ELECTRIC RESOURCE ACQUISITION DECISION MUST BE  
22 BASED IN PART ON REVIEW OF THE BEST VALUE EMPLOYMENT METRICS  
23 CRITERIA SET FORTH IN ANY SOLICITATION DOCUMENT. THE COMMISSION  
24 SHALL NOT APPROVE ANY ELECTRIC RESOURCE PLAN, ACQUISITION, OR  
25 POWER PURCHASE AGREEMENT THAT FAILS TO EITHER:

26 (I) PROVIDE THE BEST VALUE EMPLOYMENT METRICS  
27 DOCUMENTATION SPECIFIED IN THE SOLICITATION DOCUMENT; OR

1 (II) IN THE ALTERNATIVE, CERTIFY COMPLIANCE WITH OBJECTIVE  
2 BEST VALUE EMPLOYMENT METRICS PERFORMANCE STANDARDS SET FORTH  
3 IN THE SOLICITATION DOCUMENT.

4 (c) THE COMMISSION MAY WAIVE THE REQUIREMENTS OF THIS  
5 SECTION IF A UTILITY AGREES TO USE A PROJECT LABOR AGREEMENT FOR  
6 CONSTRUCTION OR EXPANSION OF A GENERATING FACILITY.

7 (2) FOLLOWING DEVELOPMENT OR ACQUISITION OF A GENERATING  
8 FACILITY BY A UTILITY, FOR ALL GENERATING FACILITIES OWNED BY THE  
9 UTILITY THAT DO NOT EMIT CARBON DIOXIDE, THE UTILITY SHALL USE  
10 UTILITY EMPLOYEES OR QUALIFIED CONTRACTORS IF THE CONTRACTORS'  
11 EMPLOYEES HAVE ACCESS TO AN APPRENTICESHIP PROGRAM REGISTERED  
12 WITH THE UNITED STATES DEPARTMENT OF LABOR'S OFFICE OF  
13 APPRENTICESHIP AND TRAINING OR BY A STATE APPRENTICESHIP COUNCIL  
14 RECOGNIZED BY THAT OFFICE; EXCEPT THAT THIS APPRENTICESHIP  
15 REQUIREMENT DOES NOT APPLY TO:

16 (a) THE DESIGN, PLANNING, OR ENGINEERING OF THE  
17 INFRASTRUCTURE;

18 (b) MANAGEMENT FUNCTIONS TO OPERATE THE INFRASTRUCTURE;  
19 OR

20 (c) ANY WORK INCLUDED IN A WARRANTY.

21 (3) THE PROVISIONS OF THIS SECTION REGARDING BEST VALUE  
22 EMPLOYMENT METRICS DO NOT APPLY TO PROJECTS INVOLVING RETAIL  
23 DISTRIBUTED GENERATION, AS DEFINED IN SECTION 40-2-124 (1)(a)(VIII)  
24 OR 40-2-127(2)(b)(I)(B).

25 **SECTION 5.** In Colorado Revised Statutes, add 40-2-132 as  
26 follows:

27 **40-2-132. Distributed generation - rights of retail electric**

1 **utility customers.** A RETAIL ELECTRIC UTILITY CUSTOMER IS ENTITLED TO  
2 GENERATE, CONSUME, STORE, AND EXPORT ELECTRICITY PRODUCED FROM  
3 ELIGIBLE ENERGY RESOURCES TO THE ELECTRIC GRID THROUGH THE USE  
4 OF CUSTOMER-SITED RETAIL DISTRIBUTED GENERATION AS DEFINED IN  
5 SECTION 40-2-124 (1)(a)(VIII), SUBJECT TO RELIABILITY STANDARDS,  
6 INTERCONNECTION RULES, AND PROCEDURES AS DETERMINED BY THE  
7 COMMISSION.

8 **SECTION 6.** In Colorado Revised Statutes, **add** article 41 to title  
9 40 as follows:

10 **ARTICLE 41**

11 **Colorado Energy Impact Bond Act**

12 **40-41-101. Short title.** THE SHORT TITLE OF THIS ARTICLE 41 IS  
13 THE "COLORADO ENERGY IMPACT BOND ACT".

14 **40-41-102. Definitions.** AS USED IN THIS ARTICLE 41, UNLESS THE  
15 CONTEXT OTHERWISE REQUIRES:

16 (1) "ADJUSTMENT MECHANISM" MEANS A FORMULA-BASED  
17 MECHANISM FOR MAKING AUTOMATIC ADJUSTMENTS TO CO-EI CHARGES  
18 AUTHORIZED IN A FINANCING ORDER AND FOR MAKING ANY ADJUSTMENTS  
19 THAT ARE NECESSARY TO CORRECT FOR OVERCOLLECTION OR  
20 UNDERCOLLECTION OF SUCH CHARGES OR OTHERWISE ENSURE THE TIMELY  
21 AND COMPLETE PAYMENT OF THE CO-EI BONDS AND ALL FINANCING  
22 COSTS.

23 (2) "ANCILLARY AGREEMENT" MEANS ANY BOND, INSURANCE  
24 POLICY, LETTER OF CREDIT, RESERVE ACCOUNT, SURETY BOND, INTEREST  
25 RATE LOCK OR SWAP ARRANGEMENT, HEDGING ARRANGEMENT, LIQUIDITY  
26 OR CREDIT SUPPORT ARRANGEMENT, OR OTHER FINANCIAL ARRANGEMENT  
27 ENTERED INTO IN CONNECTION WITH CO-EI BONDS THAT IS DESIGNED TO

1 PROMOTE THE CREDIT QUALITY AND MARKETABILITY OF THE CO-EI  
2 BONDS OR TO MITIGATE THE RISK OF AN INCREASE IN INTEREST RATES.

3 (3) "ASSIGNEE" MEANS ANY PERSON TO WHICH AN INTEREST IN  
4 CO-EI PROPERTY IS SOLD, ASSIGNED, TRANSFERRED, OR CONVEYED,  
5 OTHER THAN AS SECURITY, AND ANY SUCCESSOR TO OR SUBSEQUENT  
6 ASSIGNEE OF SUCH A PERSON.

7 (4) "BONDHOLDER" MEANS ANY HOLDER OR OWNER OF CO-EI  
8 BONDS.

9 (5) "CO-EI BONDS" MEANS COLORADO ENERGY IMPACT BONDS  
10 THAT ARE LOW-COST CORPORATE SECURITIES, SUCH AS SENIOR SECURED  
11 BONDS, DEBENTURES, NOTES, CERTIFICATES OF PARTICIPATION,  
12 CERTIFICATES OF BENEFICIAL INTEREST, CERTIFICATES OF OWNERSHIP, OR  
13 OTHER EVIDENCES OF INDEBTEDNESS OR OWNERSHIP THAT HAVE A  
14 SCHEDULED MATURITY DATE AS DETERMINED REASONABLE BY THE  
15 COMMISSION BUT NOT LATER THAN THIRTY-TWO YEARS FOLLOWING  
16 ISSUANCE, THAT ARE RATED AA OR AA2 OR BETTER BY AT LEAST ONE  
17 MAJOR INDEPENDENT CREDIT RATING AGENCY AT THE TIME OF ISSUANCE,  
18 AND THAT ARE ISSUED BY AN ELECTRIC UTILITY OR AN ASSIGNEE  
19 PURSUANT TO A FINANCING ORDER, THE PROCEEDS OF WHICH ARE USED,  
20 DIRECTLY OR INDIRECTLY, TO RECOVER, FINANCE, OR REFINANCE  
21 COMMISSION-APPROVED CO-EI COSTS AND FINANCING COSTS.

22 (6) "CO-EI CHARGE" MEANS A CHARGE IN AN AMOUNT  
23 AUTHORIZED BY THE COMMISSION IN A FINANCING ORDER IN ORDER TO  
24 PROVIDE A SOURCE OF REVENUE SOLELY TO REPAY, FINANCE, OR  
25 REFINANCE CO-EI COSTS AND FINANCING COSTS THAT ARE IMPOSED ON  
26 AND ARE A PART OF ALL CUSTOMER BILLS AND ARE COLLECTED IN FULL BY  
27 THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER APPLIES, ITS

1 SUCCESSORS OR ASSIGNEES, OR A COLLECTION AGENT THROUGH A  
2 NONBYPASSABLE CHARGE THAT IS SEPARATE AND APART FROM THE  
3 ELECTRIC UTILITY'S BASE RATES.

4 (7) (a) "CO-EI COSTS" MEANS:

5 (I) (A) AT THE OPTION OF AND UPON PETITION BY AN ELECTRIC  
6 UTILITY, AND AS APPROVED BY THE COMMISSION, ANY OF THE PRETAX  
7 COSTS THAT THE ELECTRIC UTILITY HAS INCURRED OR WILL INCUR THAT  
8 ARE CAUSED BY, ASSOCIATED WITH, OR REMAIN AS A RESULT OF THE  
9 RETIREMENT OF AN ELECTRIC GENERATING FACILITY LOCATED IN THE  
10 STATE.

11 (B) AS USED IN THIS SUBSECTION (7), "PRETAX COSTS", IF  
12 APPROVED BY THE COMMISSION, INCLUDE, BUT ARE NOT LIMITED TO, THE  
13 UNRECOVERED CAPITALIZED COST OF A RETIRED ELECTRIC GENERATING  
14 FACILITY, COSTS OF DECOMMISSIONING AND RESTORING THE SITE OF THE  
15 ELECTRIC GENERATING FACILITY, AND OTHER APPLICABLE CAPITAL AND  
16 OPERATING COSTS, ACCRUED CARRYING CHARGES, DEFERRED EXPENSES,  
17 REDUCTIONS FOR APPLICABLE INSURANCE AND SALVAGE PROCEEDS AND  
18 THE COSTS OF RETIRING ANY EXISTING INDEBTEDNESS, FEES, COSTS, AND  
19 EXPENSES TO MODIFY EXISTING DEBT AGREEMENTS OR FOR WAIVERS OR  
20 CONSENTS RELATED TO EXISTING DEBT AGREEMENTS.

21 (II) AMOUNTS FOR ASSISTANCE TO AFFECTED WORKERS AND  
22 COMMUNITIES IF APPROVED BY THE COMMISSION.

23 (III) PRETAX COSTS THAT AN ELECTRIC UTILITY HAS PREVIOUSLY  
24 INCURRED RELATED TO THE COMMISSION-APPROVED CLOSURE OF AN  
25 ELECTRIC GENERATING FACILITY OCCURRING BEFORE THE EFFECTIVE DATE  
26 OF THIS SECTION.

27 (b) "CO-EI COSTS" DO NOT INCLUDE ANY MONETARY PENALTY,

1 FINE, OR FORFEITURE ASSESSED AGAINST AN ELECTRIC UTILITY BY A  
2 GOVERNMENT AGENCY OR COURT UNDER A FEDERAL OR STATE  
3 ENVIRONMENTAL STATUTE, RULE, OR REGULATION.

4 (8) "CO-EI PROPERTY" MEANS:

5 (a) ALL RIGHTS AND INTERESTS OF AN ELECTRIC UTILITY OR  
6 SUCCESSOR OR ASSIGNEE OF AN ELECTRIC UTILITY UNDER A FINANCING  
7 ORDER FOR THE RIGHT TO IMPOSE, BILL, COLLECT, AND RECEIVE CO-EI  
8 CHARGES AS IT IS AUTHORIZED TO DO SOLELY UNDER THE FINANCING  
9 ORDER AND TO OBTAIN PERIODIC ADJUSTMENTS TO SUCH CO-EI CHARGES  
10 AS PROVIDED IN THE FINANCING ORDER; AND

11 (b) ALL REVENUE, COLLECTIONS, CLAIMS, RIGHTS TO PAYMENTS,  
12 PAYMENTS, MONEY, OR PROCEEDS ARISING FROM THE RIGHTS AND  
13 INTERESTS SPECIFIED IN SUBSECTION (8)(a) OF THIS SECTION, REGARDLESS  
14 OF WHETHER SUCH REVENUE, COLLECTIONS, CLAIMS, RIGHTS TO PAYMENT,  
15 PAYMENTS, MONEY, OR PROCEEDS ARE IMPOSED, BILLED, RECEIVED,  
16 COLLECTED, OR MAINTAINED TOGETHER WITH OR COMMINGLED WITH  
17 OTHER REVENUE, COLLECTIONS, RIGHTS TO PAYMENT, PAYMENTS, MONEY,  
18 OR PROCEEDS.

19 (9) "CO-EI REVENUE" MEANS ALL REVENUE, RECEIPTS,  
20 COLLECTIONS, PAYMENTS, MONEY, CLAIMS, OR OTHER PROCEEDS ARISING  
21 FROM CO-EI PROPERTY.

22 (10) "COMMISSION" MEANS THE PUBLIC UTILITIES COMMISSION OF  
23 THE STATE OF COLORADO.

24 (11) "CUSTOMER" MEANS A PERSON THAT TAKES ELECTRIC  
25 DISTRIBUTION OR ELECTRIC TRANSMISSION SERVICE FROM AN ELECTRIC  
26 UTILITY FOR CONSUMPTION OF ELECTRICITY IN THE STATE. THE TERM  
27 INCLUDES A CUSTOMER'S SUCCESSORS AND ASSIGNEES.



1 (12) "ELECTRIC UTILITY" MEANS AN ENTITY OPERATING FOR THE  
2 PURPOSE OF SUPPLYING ELECTRICITY TO THE PUBLIC FOR DOMESTIC,  
3 MECHANICAL, OR PUBLIC USES AND INCLUDES AN INVESTOR-OWNED  
4 ELECTRIC UTILITY SUBJECT TO REGULATION UNDER ARTICLES 1 TO 7 OF  
5 THIS TITLE 40, A MUNICIPALLY OWNED UTILITY, AND A COOPERATIVE  
6 ELECTRIC ASSOCIATION.

7 (13) "FINANCING COSTS" MEANS, IF APPROVED BY THE  
8 COMMISSION IN A FINANCING ORDER, COSTS TO ISSUE, SERVICE, REPAY, OR  
9 REFINANCE CO-EI BONDS, WHETHER INCURRED OR PAID UPON ISSUANCE  
10 OF THE CO-EI BONDS OR OVER THE LIFE OF THE CO-EI BONDS, AND  
11 INCLUDES:

12 (a) PRINCIPAL, INTEREST, AND REDEMPTION PREMIUMS THAT ARE  
13 PAYABLE ON CO-EI BONDS;

14 (b) ANY PAYMENT REQUIRED UNDER AN ANCILLARY AGREEMENT  
15 AND ANY AMOUNT REQUIRED TO FUND OR REPLENISH A RESERVE ACCOUNT  
16 OR OTHER ACCOUNTS ESTABLISHED UNDER THE TERMS OF ANY INDENTURE,  
17 ANCILLARY AGREEMENT, OR OTHER FINANCING DOCUMENT PERTAINING TO  
18 CO-EI BONDS;

19 (c) ANY OTHER COSTS RELATED TO ISSUING, SUPPORTING,  
20 REPAYING, REFUNDING, AND SERVICING CO-EI BONDS, INCLUDING, BUT  
21 NOT LIMITED TO, SERVICING FEES, ACCOUNTING AND AUDITING FEES,  
22 TRUSTEE FEES, LEGAL FEES, CONSULTING FEES, FINANCIAL ADVISOR FEES,  
23 ADMINISTRATIVE FEES, PLACEMENT AND UNDERWRITING FEES,  
24 CAPITALIZED INTEREST, RATING AGENCY FEES, STOCK EXCHANGE LISTING  
25 AND COMPLIANCE FEES, SECURITY REGISTRATION FEES, FILING FEES,  
26 INFORMATION TECHNOLOGY PROGRAMMING COSTS, AND ANY OTHER  
27 DEMONSTRABLE COSTS NECESSARY TO OTHERWISE ENSURE AND

1 GUARANTEE THE TIMELY PAYMENT OF CO-EI BONDS OR OTHER AMOUNTS  
2 OR CHARGES PAYABLE IN CONNECTION WITH CO-EI BONDS;

3 (d) ANY TAXES AND LICENSE FEES IMPOSED ON THE REVENUE  
4 GENERATED FROM THE COLLECTION OF A CO-EI CHARGE;

5 (e) ANY STATE AND LOCAL TAXES, INCLUDING FRANCHISE, SALES  
6 AND USE, AND OTHER TAXES OR SIMILAR CHARGES, INCLUDING, BUT NOT  
7 LIMITED TO, REGULATORY ASSESSMENT FEES, WHETHER PAID, PAYABLE,  
8 OR ACCRUED; AND

9 (f) ANY COSTS INCURRED BY AN ELECTRIC UTILITY TO PAY THE  
10 COMMISSION'S COSTS OF ENGAGING SPECIALIZED COUNSEL AND EXPERT  
11 CONSULTANTS EXPERIENCED IN SECURITIZED ELECTRIC UTILITY  
12 RATEPAYER-BACKED BOND FINANCING SIMILAR TO CO-EI BONDS AS  
13 AUTHORIZED BY SECTION 40-41-107 (4).

14 (14) "FINANCING ORDER" MEANS AN ORDER OF THE COMMISSION  
15 ISSUED PURSUANT TO SECTION 40-41-106 THAT GRANTS, IN WHOLE OR IN  
16 PART, AN APPLICATION FILED PURSUANT TO SECTION 40-41-103 AND THAT  
17 AUTHORIZES THE ISSUANCE OF CO-EI BONDS IN ONE OR MORE SERIES, THE  
18 IMPOSITION, CHARGING, AND COLLECTION OF CO-EI CHARGES, AND THE  
19 CREATION OF CO-EI PROPERTY.

20 (15) "FINANCING PARTY" MEANS A HOLDER OF CO-EI BONDS AND  
21 TRUSTEES, COLLATERAL AGENTS, ANY PARTY UNDER AN ANCILLARY  
22 AGREEMENT, OR ANY OTHER PERSON ACTING FOR THE BENEFIT OF A  
23 HOLDER OF CO-EI BONDS.

24 (16) "FINANCING STATEMENT" HAS THE SAME MEANING AS SET  
25 FORTH IN SECTION 4-9-102 (39).

26 (17) "NONBYPASSABLE" MEANS THAT THE PAYMENT OF A CO-EI  
27 CHARGE MAY NOT BE AVOIDED BY ANY FUTURE OR EXISTING CUSTOMER

1 LOCATED WITHIN AN ELECTRIC UTILITY SERVICE AREA AS SUCH SERVICE  
2 AREA EXISTED AS OF THE DATE OF THE FINANCING ORDER OR, IF THE  
3 FINANCING ORDER SO PROVIDES, AS SUCH SERVICE AREA MAY BE  
4 EXPANDED, EVEN IF THE CUSTOMER ELECTS TO PURCHASE ELECTRICITY  
5 FROM A SUPPLIER OTHER THAN THE ELECTRIC UTILITY.

6 (18) "SUCCESSOR" MEANS, WITH RESPECT TO ANY LEGAL ENTITY,  
7 ANOTHER LEGAL ENTITY THAT SUCCEEDS BY OPERATION OF LAW TO THE  
8 RIGHTS AND OBLIGATIONS OF THE FIRST LEGAL ENTITY PURSUANT TO ANY  
9 BANKRUPTCY, REORGANIZATION, RESTRUCTURING, OTHER INSOLVENCY  
10 PROCEEDING, MERGER, ACQUISITION, CONSOLIDATION, OR SALE OR  
11 TRANSFER OF ASSETS, WHETHER ANY OF THESE OCCUR DUE TO A  
12 RESTRUCTURING OF THE ELECTRIC POWER INDUSTRY OR OTHERWISE.  
13 SOLELY FOR THE PURPOSE OF IMPLEMENTING THIS ARTICLE 41,  
14 "SUCCESSOR" DOES NOT INCLUDE ANY MUNICIPALLY OWNED ELECTRIC  
15 UTILITY ESTABLISHED AND PROVIDING RETAIL ELECTRIC SERVICE BEFORE  
16 THE DATE ON WHICH CO-EI BONDS ARE ISSUED PURSUANT TO A FINANCING  
17 ORDER RELATING TO ELECTRIC GENERATING FACILITIES THAT SERVE OR  
18 PREVIOUSLY SERVED THE SERVICE AREA OF THE MUNICIPALLY OWNED  
19 ELECTRIC UTILITY.

20 **40-41-103. Financing orders - application requirements.**

21 (1) AN ELECTRIC UTILITY, IN ITS SOLE DISCRETION, MAY APPLY TO THE  
22 COMMISSION FOR A FINANCING ORDER AS AUTHORIZED BY THIS SECTION.

23 (2) (a) AN INVESTOR-OWNED OR OTHER REGULATED ELECTRIC  
24 UTILITY MAY FILE AN APPLICATION FOR APPROVAL TO ISSUE CO-EI BONDS  
25 IN ONE OR MORE SERIES, IMPOSE, CHARGE, AND COLLECT CO-EI CHARGES,  
26 AND CREATE CO-EI PROPERTY RELATED TO THE RETIREMENT OF AN  
27 ELECTRIC GENERATING FACILITY IN COLORADO THAT HAS PREVIOUSLY

1 BEEN APPROVED BY THE COMMISSION.

2 (b) AN ELECTRIC UTILITY THAT IS NOT REGULATED MAY FILE AN  
3 APPLICATION FOR APPROVAL TO ISSUE CO-EI BONDS IN ONE OR MORE  
4 SERIES, IMPOSE, CHARGE, AND COLLECT CO-EI CHARGES, AND CREATE  
5 CO-EI PROPERTY RELATED TO THE RETIREMENT OF AN ELECTRIC  
6 GENERATING FACILITY IN COLORADO.

7 (c) THE COMMISSION SHALL TAKE FINAL ACTION TO APPROVE,  
8 DENY, OR MODIFY ANY APPLICATION FOR A FINANCING ORDER AS  
9 DESCRIBED IN SUBSECTION (2)(a) OR (2)(b) OF THIS SECTION IN A FINAL  
10 ORDER ISSUED IN ACCORDANCE WITH THE COMMISSION'S RULES FOR  
11 ADDRESSING APPLICATIONS.

12 (3) (a) AN APPLICATION FOR A FINANCING ORDER MUST INCLUDE  
13 THE FOLLOWING INFORMATION:

14 (I) A DESCRIPTION OF THE CO-EI COSTS THAT THE APPLICANT  
15 PROPOSES TO RECOVER WITH THE PROCEEDS OF THE CO-EI BONDS;

16 (II) AN ESTIMATE OF THE FINANCING COSTS RELATED TO THE  
17 CO-EI BONDS;

18 (III) AN ESTIMATE OF THE CO-EI CHARGES NECESSARY TO PAY  
19 THE CO-EI COSTS AND ALL FINANCING COSTS, AND THE PERIOD OVER  
20 WHICH SUCH COSTS WILL BE RECOVERED;

21 (IV) A PROPOSED METHODOLOGY FOR ALLOCATING THE REVENUE  
22 REQUIREMENT FOR THE CO-EI CHARGE AMONG CUSTOMER CLASSES,  
23 INCLUDING SPECIAL CONTRACT CUSTOMERS;

24 (V) A DESCRIPTION OF THE NONBYPASSABLE CO-EI CHARGE  
25 REQUIRED TO BE PAID BY CUSTOMERS WITHIN THE ELECTRIC UTILITY'S  
26 SERVICE AREA FOR RECOVERY OF CO-EI COSTS AND A PROPOSED  
27 ADJUSTMENT MECHANISM REFLECTING THE ALLOCATION METHODOLOGY

1 REFERRED TO IN SUBSECTION (3)(a)(IV) OF THIS SECTION;

2 (VI) AN ESTIMATE OF THE TIMING OF THE ISSUANCE OF THE CO-EI  
3 BONDS, OR SERIES OF BONDS; AND

4 (VII) AN ESTIMATE OF THE NET PROJECTED COST SAVINGS OR A  
5 DEMONSTRATION OF HOW THE ISSUANCE OF CO-EI BONDS AND THE  
6 IMPOSITION OF CO-EI CHARGES WOULD AVOID OR SIGNIFICANTLY  
7 MITIGATE RATE IMPACTS TO CUSTOMERS AS COMPARED WITH TRADITIONAL  
8 METHODS OF FINANCING AND RECOVERING CO-EI COSTS FROM  
9 CUSTOMERS.

10 (b) IN ADDITION TO FURNISHING THE INFORMATION SPECIFIED IN  
11 SUBSECTION (3)(a) OF THIS SECTION, AN APPLICANT SHALL:

12 (I) SPECIFY A FUTURE RATEMAKING PROCESS TO RECONCILE ANY  
13 DIFFERENCE BETWEEN THE ACTUAL CO-EI COSTS FINANCED BY CO-EI  
14 BONDS AND THE FINAL CO-EI COSTS INCURRED BY THE UTILITY OR THE  
15 ASSIGNEE. THE RECONCILIATION MAY AFFECT THE ELECTRIC UTILITY'S  
16 BASE RATES OR ANY RIDER ADOPTED PURSUANT TO SECTION 40-41-104  
17 (4), BUT SHALL NOT AFFECT THE AMOUNT OF THE BONDS OR THE  
18 ASSOCIATED CO-EI CHARGES PAID BY CUSTOMERS.

19 (II) PROVIDE DIRECT TESTIMONY SUPPORTING THE APPLICATION.

20 **40-41-104. Issuance of financing orders.** (1) FOLLOWING  
21 NOTICE AND HEARING ON AN APPLICATION FOR A FINANCING ORDER AS  
22 REQUIRED BY THE COMMISSION'S RULES, PRACTICE, AND PROCEDURE, THE  
23 COMMISSION MAY ISSUE A FINANCING ORDER IF THE COMMISSION FINDS  
24 THAT:

25 (a) THE CO-EI COSTS DESCRIBED IN THE APPLICATION RELATED TO  
26 THE RETIREMENT OF THE ELECTRIC GENERATING FACILITIES ARE  
27 REASONABLE;

1 (b) THE PROPOSED ISSUANCE OF CO-EI BONDS AND THE  
2 IMPOSITION AND COLLECTION OF CO-EI CHARGES:

- 3 (I) ARE JUST AND REASONABLE;
- 4 (II) ARE CONSISTENT WITH THE PUBLIC INTEREST;
- 5 (III) CONSTITUTE A PRUDENT AND REASONABLE MECHANISM FOR  
6 THE FINANCING OF THE CO-EI COSTS DESCRIBED IN THE APPLICATION; AND
- 7 (IV) WILL PROVIDE SUBSTANTIAL, TANGIBLE, AND QUANTIFIABLE  
8 NET PRESENT VALUE SAVINGS OR OTHER BENEFITS TO CUSTOMERS THAT  
9 ARE GREATER THAN THE BENEFITS THAT WOULD HAVE BEEN ACHIEVED  
10 ABSENT THE ISSUANCE OF CO-EI BONDS; AND

11 (c) THE PROVISIONS OF THE FINANCING ORDER WILL ENSURE THAT  
12 THE PROPOSED STRUCTURING, MARKETING, AND PRICING OF THE CO-EI  
13 BONDS WILL:

- 14 (I) LOWER OVERALL COSTS TO CUSTOMERS OR AVOID OR MITIGATE  
15 RATE IMPACTS TO CUSTOMERS RELATIVE TO TRADITIONAL METHODS OF  
16 FINANCING; AND
- 17 (II) ACHIEVE THE MAXIMUM NET PRESENT VALUE OF CUSTOMER  
18 SAVINGS, AS DETERMINED BY THE COMMISSION IN A FINANCING ORDER,  
19 CONSISTENT WITH MARKET CONDITIONS AT THE TIME OF SALE AND THE  
20 TERMS OF THE FINANCING ORDER.

21 (2) THE FINANCING ORDER MUST:

- 22 (a) DETERMINE THE MAXIMUM AMOUNT OF CO-EI COSTS THAT  
23 MAY BE FINANCED FROM PROCEEDS OF CO-EI BONDS AUTHORIZED TO BE  
24 ISSUED BY THE FINANCING ORDER;
- 25 (b) APPROVE A METHODOLOGY FOR ALLOCATING THE REVENUE  
26 REQUIREMENT FOR THE CO-EI CHARGE AMONG CUSTOMER CLASSES;
- 27 (c) DESCRIBE THE PROPOSED CUSTOMER BILLING MECHANISM FOR

1 CO-EI CHARGES AND INCLUDE A FINDING THAT THE MECHANISM IS JUST  
2 AND REASONABLE;

3 (d) DESCRIBE AND ESTIMATE THE FINANCING COSTS THAT MAY BE  
4 RECOVERED THROUGH CO-EI CHARGES AND THE PERIOD OVER WHICH THE  
5 COSTS MAY BE RECOVERED, SUBJECT TO SECTION 40-41-105;

6 (e) DETERMINE WHETHER THE PROPOSED STRUCTURING, EXPECTED  
7 PRICING, AND FINANCING COSTS OF CO-EI BONDS HAVE A SIGNIFICANT  
8 LIKELIHOOD OF LOWERING OVERALL COSTS TO CUSTOMERS OR AVOIDING  
9 OR SIGNIFICANTLY MITIGATING RATE IMPACTS TO CUSTOMERS AS  
10 COMPARED WITH TRADITIONAL METHODS OF FINANCING AND RECOVERING  
11 CO-EI COSTS FROM CUSTOMERS. A FINANCING ORDER MUST PROVIDE  
12 DETAILED FINDINGS OF FACT ADDRESSING COST-EFFECTIVENESS AND  
13 ASSOCIATED RATE IMPACTS UPON CUSTOMERS AND CUSTOMER CLASSES.

14 (f) REQUIRE THE IMPOSITION AND COLLECTION OF THE  
15 NON-BYPASSABLE CO-EI CHARGES AUTHORIZED UNDER A FINANCING  
16 ORDER FOR THE PERIOD SPECIFIED IN SUBSECTION (2)(d) OF THIS SECTION;

17 (g) DESCRIBE THE CO-EI PROPERTY THAT MAY BE CREATED IN  
18 FAVOR OF THE UTILITY AND ITS SUCCESSORS AND ASSIGNEES AND THAT  
19 WILL BE USED TO PAY, AND SECURE THE PAYMENT OF, THE CO-EI BONDS  
20 AND FINANCING COSTS AUTHORIZED IN THE FINANCING ORDER;

21 (h) AUTHORIZE AND APPROVE AN ADJUSTMENT MECHANISM  
22 REFLECTING THE ALLOCATION METHODOLOGY SPECIFIED IN SUBSECTION  
23 (2)(b) OF THIS SECTION;

24 (i) AUTHORIZE THE APPLICANT ELECTRIC UTILITY TO FINANCE  
25 CO-EI COSTS THROUGH THE ISSUANCE OF ONE OR MORE SERIES OF CO-EI  
26 BONDS. AN ELECTRIC UTILITY IS NOT REQUIRED TO SECURE A SEPARATE  
27 FINANCING ORDER FOR EACH ISSUANCE OF CO-EI BONDS OR FOR EACH

1 SCHEDULED PHASE OF THE PREVIOUSLY APPROVED RETIREMENT OF  
2 ELECTRIC GENERATING FACILITIES APPROVED IN THE FINANCING ORDER.

3 (j) INCLUDE ANY ADDITIONAL FINDINGS OR CONCLUSIONS DEEMED  
4 APPROPRIATE BY THE COMMISSION;

5 (k) SPECIFY THE DEGREE OF FLEXIBILITY AFFORDED TO THE  
6 ELECTRIC UTILITY IN ESTABLISHING THE TERMS AND CONDITIONS OF THE  
7 CO-EI BONDS, INCLUDING, BUT NOT LIMITED TO, REPAYMENT SCHEDULES,  
8 EXPECTED INTEREST RATES, AND OTHER FINANCING COSTS;

9 (l) SPECIFY THE TIMING OF ACTIONS REQUIRED BY THE ORDER,  
10 INCLUDING:

11 (I) THE TIMING OF ISSUANCE OF THE CO-EI BONDS, INDEPENDENT  
12 OF THE SCHEDULE OF RETIREMENT OF THE ELECTRIC GENERATING  
13 FACILITY;

14 (II) THE ENERGY ASSISTANCE FUNDS, IF INCLUDED IN THE BOND  
15 ISSUE, MAY BE TRANSFERRED TO A THIRD-PARTY ENTITY DESIGNATED BY  
16 THE COMMISSION TO ADMINISTER TRANSITION ASSISTANCE ON BEHALF OF  
17 DISPLACED WORKERS AND AFFECTED COMMUNITIES NO LATER THAN THE  
18 DATE ON WHICH THE ELECTRIC GENERATING FACILITY CEASES OPERATION;  
19 AND

20 (III) THE APPLICANT ELECTRIC UTILITY FILES TO REDUCE ITS RATES  
21 AS REQUIRED IN SUBSECTION (4) OF THIS SECTION SIMULTANEOUSLY WITH  
22 THE INCEPTION OF THE CO-EI CHARGES AND INDEPENDENTLY OF THE  
23 SCHEDULE OF CLOSING AND DECOMMISSIONING OF THE ELECTRIC  
24 GENERATING FACILITY; AND

25 (m) SPECIFY A FUTURE RATEMAKING PROCESS TO RECONCILE ANY  
26 DIFFERENCE BETWEEN THE ACTUAL CO-EI COSTS FINANCED BY CO-EI  
27 BONDS AND THE FINAL CO-EI COSTS INCURRED BY THE UTILITY OR THE



1     ASSIGNEE. THE RECONCILIATION MAY AFFECT THE ELECTRIC UTILITY'S  
2     BASE RATES OR ANY RIDER ADOPTED PURSUANT TO SUBSECTION (4) OF  
3     THIS SECTION, BUT SHALL NOT AFFECT THE AMOUNT OF THE BONDS OR THE  
4     ASSOCIATED CO-EI CHARGES PAID BY CUSTOMERS.

5             (3) A FINANCING ORDER ISSUED TO AN ELECTRIC UTILITY MUST  
6     PERMIT AND MAY REQUIRE THE CREATION OF AN ELECTRIC UTILITY'S  
7     CO-EI PROPERTY PURSUANT TO SUBSECTION (2)(g) OF THIS SECTION TO BE  
8     CONDITIONED UPON, AND SIMULTANEOUS WITH, THE SALE OR OTHER  
9     TRANSFER OF THE CO-EI PROPERTY TO AN ASSIGNEE AND THE PLEDGE OF  
10    THE CO-EI PROPERTY TO SECURE CO-EI BONDS.

11            (4) A FINANCING ORDER MUST REQUIRE THE APPLICANT ELECTRIC  
12    UTILITY, SIMULTANEOUSLY WITH THE INCEPTION OF THE COLLECTION OF  
13    CO-EI CHARGES, TO REDUCE ITS RATES THROUGH A REDUCTION IN BASE  
14    RATES OR BY A NEGATIVE RIDER ON CUSTOMER BILLS IN AN AMOUNT  
15    EQUAL TO THE REVENUE REQUIREMENT ASSOCIATED WITH THE UTILITY  
16    ASSETS BEING FINANCED BY CO-EI BONDS.

17            (5) IN A FINANCING ORDER, THE COMMISSION MAY INCLUDE ANY  
18    CONDITIONS THAT ARE NECESSARY TO PROMOTE THE PUBLIC INTEREST  
19    AND MAY GRANT RELIEF THAT IS DIFFERENT FROM THAT WHICH WAS  
20    REQUESTED IN THE APPLICATION SO LONG AS THE RELIEF IS WITHIN THE  
21    SCOPE OF THE MATTERS ADDRESSED IN THE COMMISSION'S NOTICE OF THE  
22    APPLICATION.

23            **40-41-105. Effect of financing order.** (1) A FINANCING ORDER  
24    REMAINS IN EFFECT UNTIL THE CO-EI BONDS ISSUED AS AUTHORIZED BY  
25    THE FINANCING ORDER HAVE BEEN PAID IN FULL AND ALL FINANCING  
26    COSTS RELATING TO THE CO-EI BONDS HAVE BEEN PAID IN FULL.

27            (2) A FINANCING ORDER REMAINS IN EFFECT AND UNABATED

1 NOTWITHSTANDING THE BANKRUPTCY, REORGANIZATION, OR INSOLVENCY  
2 OF THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER APPLIES OR  
3 ANY AFFILIATE OF THE ELECTRIC UTILITY OR SUCCESSOR ENTITY OR  
4 ASSIGNEE.

5 (3) SUBJECT TO JUDICIAL REVIEW AS PROVIDED FOR IN SECTION  
6 40-41-108, A FINANCING ORDER IS IRREVOCABLE. THEREFORE,  
7 NOTWITHSTANDING SECTION 40-6-112 (1), THE COMMISSION MAY NOT  
8 REDUCE, IMPAIR, POSTPONE, OR TERMINATE CO-EI CHARGES APPROVED  
9 IN A FINANCING ORDER OR IMPAIR CO-EI PROPERTY OR THE COLLECTION  
10 OR RECOVERY OF CO-EI REVENUE.

11 (4) NOTWITHSTANDING SUBSECTION (3) OF THIS SECTION, UPON  
12 THE REQUEST OF AN ELECTRIC UTILITY OR AT THE REQUEST OF PARTIES IN  
13 THE COMMISSION PROCEEDING, THE COMMISSION MAY COMMENCE A  
14 PROCEEDING AND ISSUE A SUBSEQUENT FINANCING ORDER THAT PROVIDES  
15 FOR REFINANCING, RETIRING, OR REFUNDING CO-EI BONDS ISSUED  
16 PURSUANT TO THE ORIGINAL FINANCING ORDER IF:

17 (a) THE COMMISSION MAKES ALL OF THE FINDINGS SPECIFIED IN  
18 SECTION 40-41-104 (1) WITH RESPECT TO THE SUBSEQUENT FINANCING  
19 ORDER; AND

20 (b) THE SUBSEQUENT FINANCING ORDER DOES NOT IMPAIR IN ANY  
21 WAY THE COVENANTS AND TERMS OF THE CO-EI BONDS TO BE  
22 REFINANCED, RETIRED, OR REFUNDED.

23 **40-41-106. Effect on commission jurisdiction.** (1) EXCEPT AS  
24 OTHERWISE PROVIDED IN SUBSECTION (2) OF THIS SECTION, IF THE  
25 COMMISSION ISSUES A FINANCING ORDER TO AN ELECTRIC UTILITY, THE  
26 COMMISSION SHALL NOT, IN EXERCISING ITS POWERS AND CARRYING OUT  
27 ITS DUTIES PURSUANT TO THIS ARTICLE 41:

1 (a) CONSIDER THE CO-EI BONDS ISSUED PURSUANT TO THE  
2 FINANCING ORDER TO BE DEBT OF THE ELECTRIC UTILITY OTHER THAN FOR  
3 INCOME TAX PURPOSES;

4 (b) CONSIDER THE CO-EI CHARGES PAID UNDER THE FINANCING  
5 ORDER TO BE REVENUE OF THE ELECTRIC UTILITY;

6 (c) CONSIDER THE CO-EI COSTS OR FINANCING COSTS SPECIFIED  
7 IN THE FINANCING ORDER TO BE THE REGULATED COSTS OR ASSETS OF THE  
8 ELECTRIC UTILITY; OR

9 (d) DETERMINE ANY PRUDENT ACTION TAKEN BY AN ELECTRIC  
10 UTILITY THAT IS CONSISTENT WITH THE FINANCING ORDER TO BE UNJUST  
11 OR UNREASONABLE.

12 (2) NOTHING IN SUBSECTION (1) OF THIS SECTION:

13 (a) PREVENTS OR PRECLUDES THE COMMISSION FROM  
14 INVESTIGATING THE COMPLIANCE OF AN ELECTRIC UTILITY WITH THE  
15 TERMS AND CONDITIONS OF A FINANCING ORDER AND REQUIRING  
16 COMPLIANCE WITH THE FINANCING ORDER; OR

17 (b) PREVENTS OR PRECLUDES THE COMMISSION FROM IMPOSING  
18 REGULATORY SANCTIONS AGAINST A REGULATED ELECTRIC UTILITY FOR  
19 FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF A FINANCING  
20 ORDER OR THE REQUIREMENTS OF THIS ARTICLE 41.

21 (3) THE COMMISSION MAY NOT REFUSE TO ALLOW THE RECOVERY  
22 OF ANY COSTS ASSOCIATED WITH THE RETIREMENT OF ELECTRIC  
23 GENERATING FACILITIES BY AN ELECTRIC UTILITY SOLELY BECAUSE THE  
24 ELECTRIC UTILITY HAS ELECTED TO FINANCE THOSE ACTIVITIES THROUGH  
25 A FINANCING MECHANISM OTHER THAN CO-EI BONDS, WHETHER OR NOT  
26 A FINANCING ORDER WITH RESPECT TO SUCH COSTS HAS BEEN APPLIED FOR  
27 BY THE UTILITY OR ISSUED BY THE COMMISSION.

1           **40-41-107. Electric utility customer protection. (1)** IN  
2 ADDITION TO ANY OTHER AUTHORITY OF THE COMMISSION;

3           (a) THE COMMISSION MAY ATTACH SUCH CONDITIONS TO THE  
4 APPROVAL OF A FINANCING ORDER AS THE COMMISSION DEEMS  
5 APPROPRIATE TO MAXIMIZE THE BENEFITS AND MINIMIZE THE RISKS OF THE  
6 TRANSACTION TO CUSTOMERS, DIRECTLY IMPACTED COLORADO WORKERS  
7 AND COMMUNITIES, AND THE ELECTRIC UTILITY;

8           (b) THE COMMISSION MAY SPECIFY IN THE FINANCING ORDER A  
9 PROCESS TO STRUCTURE, MARKET, AND PRICE CO-EI BONDS, INCLUDING  
10 THE SELECTION OF THE UNDERWRITER OR UNDERWRITERS, IN A MANNER  
11 CONSISTENT WITH THE PUBLIC INTEREST AND THE LEGAL OBLIGATIONS OF  
12 THE ELECTRIC UTILITY;

13           (c) THE COMMISSION SHALL REVIEW AND DETERMINE THE  
14 REASONABLENESS OF ALL PROPOSED UP-FRONT AND ONGOING FINANCING  
15 COSTS;

16           (d) THE COMMISSION SHALL DETERMINE HOW IT WILL ENGAGE TO  
17 ENSURE THAT THE ISSUANCE OF THE CO-EI BONDS MAXIMIZES NET  
18 PRESENT VALUE CUSTOMER SAVINGS, CONSISTENT WITH MARKET  
19 CONDITIONS AT THE TIME OF ISSUANCE AND THE TERMS OF THE FINANCING  
20 ORDER; AND

21           (e) THE COMMISSION HAS THE AUTHORITY REQUIRED TO PERFORM  
22 COMPREHENSIVE DUE DILIGENCE IN ITS EVALUATION OF AN APPLICATION  
23 FOR A FINANCING ORDER AND HAS THE AUTHORITY TO OVERSEE THE  
24 PROCESS USED TO STRUCTURE, MARKET, AND PRICE CO-EI BONDS.

25           (2) ALTERNATIVE FINANCING MECHANISMS MAY RESULT IN LOWER  
26 COSTS TO ELECTRIC UTILITY CUSTOMERS. IT IS HELPFUL TO PROVIDE  
27 ALTERNATIVE FINANCING MECHANISMS TO BE UTILIZED BY UTILITIES AS

1 OPTIONS FOR REDUCING THE TOTAL AMOUNT OF COSTS BEING INCLUDED  
2 IN CUSTOMER RATES RESULTING FROM ACCELERATING THE RETIREMENT  
3 OF ELECTRIC GENERATING FACILITIES.

4 (3) WITHIN ONE HUNDRED TWENTY DAYS AFTER THE ISSUANCE OF  
5 CO-EI BONDS, THE APPLICANT SHALL FILE WITH THE COMMISSION  
6 INFORMATION REGARDING THE ACTUAL UP-FRONT ISSUANCE COSTS OF THE  
7 CO-EI BONDS. THE COMMISSION SHALL REVIEW, ON A REASONABLY  
8 COMPARABLE BASIS, SUCH INFORMATION TO DETERMINE IF THE ISSUANCE  
9 RESULTED IN THE LOWEST OVERALL COSTS THAT WERE REASONABLY  
10 CONSISTENT WITH BOTH MARKET CONDITIONS AT THE TIME OF THE  
11 ISSUANCE AND THE TERMS OF THE FINANCING ORDER. THE COMMISSION  
12 MAY DISALLOW INCREMENTAL UP-FRONT ISSUANCE COSTS IN EXCESS OF  
13 THE LOWEST OVERALL COSTS BY REQUIRING THE ELECTRIC UTILITY TO  
14 MAKE A CREDIT IN AN AMOUNT EQUAL TO THE EXCESS OF ACTUAL  
15 ISSUANCE COSTS INCURRED, AND PAID FOR OUT OF CO-EI BOND PROCEEDS,  
16 AND THE LOWEST OVERALL ISSUANCE COSTS AS DETERMINED BY THE  
17 COMMISSION. THE COMMISSION MAY NOT MAKE ADJUSTMENTS TO THE  
18 CO-EI CHARGES FOR ANY SUCH EXCESS UP-FRONT ISSUANCE COSTS.

19 (4) IN PERFORMING ITS RESPONSIBILITIES UNDER THIS ARTICLE  
20 41, THE COMMISSION MAY ENGAGE OUTSIDE CONSULTANTS AND COUNSEL,  
21 SELECTED BY THE COMMISSION, WHO ARE EXPERIENCED IN SECURITIZED  
22 ELECTRIC UTILITY RATEPAYER-BACKED BOND FINANCING SIMILAR TO  
23 CO-EI BONDS. THESE OUTSIDE CONSULTANTS AND COUNSEL HAVE A DUTY  
24 OF LOYALTY SOLELY TO THE COMMISSION, MUST NOT HAVE ANY  
25 FINANCIAL INTEREST IN THE CO-EI BONDS, AND SHALL NOT PARTICIPATE  
26 IN THE UNDERWRITING OR SECONDARY MARKET TRADING OF THE CO-EI  
27 BONDS. THE EXPENSES ASSOCIATED WITH ANY ENGAGEMENT SHALL BE

1 PAID BY THE APPLICANT UTILITY AND SHALL BE INCLUDED AS FINANCING  
2 COSTS AND INCLUDED IN THE CO-EI CHARGE, ARE NOT AN OBLIGATION OF  
3 THE STATE, AND ARE ASSIGNED SOLELY TO THE TRANSACTION.

4 (5) IF AN ELECTRIC UTILITY'S APPLICATION FOR A FINANCING  
5 ORDER IS DENIED OR WITHDRAWN OR FOR ANY REASON NO CO-EI BONDS  
6 ARE ISSUED, ANY COSTS OF RETAINING EXPERT CONSULTANTS AND  
7 COUNSEL ON BEHALF OF THE COMMISSION, AS AUTHORIZED BY  
8 SUBSECTION (4) OF THIS SECTION AND APPROVED BY THE COMMISSION,  
9 SHALL BE PAID BY THE APPLICANT ELECTRIC UTILITY AND SHALL BE  
10 ELIGIBLE FOR RECOVERY BY THE ELECTRIC UTILITY, INCLUDING CARRYING  
11 COSTS, IN THE ELECTRIC UTILITY'S FUTURE RATES.

12 **40-41-108. Judicial review of financing orders.** A FINANCING  
13 ORDER IS A FINAL ORDER OF THE COMMISSION. NOTWITHSTANDING  
14 SECTION 40-6-115 (5) SPECIFYING PROPER VENUE FOR PETITION FILINGS,  
15 A PARTY AGGRIEVED BY THE ISSUANCE OF A FINANCING ORDER MAY  
16 PETITION FOR SUSPENSION AND REVIEW OF THE FINANCING ORDER ONLY IN  
17 THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER. IN THE CASE  
18 OF ANY PETITION FOR SUSPENSION AND REVIEW, THE COURT SHALL  
19 PROCEED TO HEAR AND DETERMINE THE ACTION AS EXPEDITIOUSLY AS  
20 PRACTICABLE AND SHALL GIVE THE ACTION PRECEDENCE OVER OTHER  
21 MATTERS NOT ACCORDED SIMILAR PRECEDENCE BY LAW.

22 **40-41-109. Electric utilities - duties.** (1) THE ELECTRIC BILLS OF  
23 AN ELECTRIC UTILITY THAT HAS OBTAINED A FINANCING ORDER AND  
24 CAUSED CO-EI BONDS TO BE ISSUED:

25 (a) MUST EXPLICITLY REFLECT THAT A PORTION OF THE CHARGES  
26 ON THE BILL REPRESENTS CO-EI CHARGES APPROVED IN A FINANCING  
27 ORDER ISSUED TO THE ELECTRIC UTILITY AND, IF THE CO-EI PROPERTY

1 HAS BEEN TRANSFERRED TO AN ASSIGNEE, MUST INCLUDE A STATEMENT  
2 THAT THE ASSIGNEE IS THE OWNER OF THE RIGHTS TO CO-EI CHARGES  
3 AND THAT THE ELECTRIC UTILITY OR OTHER ENTITY, IF APPLICABLE, IS  
4 ACTING AS A COLLECTION AGENT OR SERVICER FOR THE ASSIGNEE;

5 (b) MUST INCLUDE THE CO-EI CHARGE ON EACH CUSTOMER'S BILL  
6 AS A SEPARATE LINE ITEM TITLED "ENERGY IMPACT ASSISTANCE CHARGE"  
7 AND MAY INCLUDE BOTH THE RATE AND THE AMOUNT OF THE CHARGE ON  
8 EACH BILL. THE FAILURE OF AN ELECTRIC UTILITY TO COMPLY WITH THIS  
9 SUBSECTION (1) DOES NOT INVALIDATE, IMPAIR, OR AFFECT ANY  
10 FINANCING ORDER, CO-EI PROPERTY, CO-EI CHARGE, OR CO-EI BONDS,  
11 BUT MAY SUBJECT THE ELECTRIC UTILITY TO PENALTIES UNDER  
12 APPLICABLE COMMISSION RULES; AND

13 (c) MUST EXPLAIN TO CUSTOMERS IN AN ANNUAL FILING WITH THE  
14 COMMISSION THE RATE IMPACT THAT FINANCING THE RETIREMENT OF  
15 ELECTRIC GENERATING FACILITIES WILL HAVE ON CUSTOMER RATES.

16 (2) AN ELECTRIC UTILITY THAT HAS OBTAINED A FINANCING ORDER  
17 AND CAUSED CO-EI BONDS TO BE ISSUED MUST DEMONSTRATE IN AN  
18 ANNUAL FILING WITH THE COMMISSION THAT CO-EI BOND PROCEEDS ARE  
19 APPLIED SOLELY TO THE REPAYMENT OF CO-EI COSTS AND THAT CO-EI  
20 REVENUES ARE APPLIED SOLELY TO THE REPAYMENT OF CO-EI BONDS AND  
21 OTHER FINANCING COSTS IN ACCORDANCE WITH THE FINANCING ORDER.  
22 THE COST OF SUCH ANNUAL FILING IS A FINANCING COST RECOVERABLE BY  
23 THE ELECTRIC UTILITY FROM THE CO-EI CHARGE.

24 **40-41-110. CO-EI property.** (1) CO-EI PROPERTY THAT IS  
25 DESCRIBED IN A FINANCING ORDER CONSTITUTES AN EXISTING PRESENT  
26 PROPERTY RIGHT OR INTEREST IN AN EXISTING PRESENT PROPERTY RIGHT  
27 EVEN THOUGH THE IMPOSITION AND COLLECTION OF CO-EI CHARGES

1 DEPENDS ON THE ELECTRIC UTILITY TO WHICH THE FINANCING ORDER IS  
2 ISSUED PERFORMING ITS SERVICING FUNCTIONS RELATING TO THE  
3 COLLECTION OF CO-EI CHARGES AND ON FUTURE ELECTRICITY  
4 CONSUMPTION. THE PROPERTY RIGHT OR INTEREST EXISTS REGARDLESS OF  
5 WHETHER THE REVENUES OR PROCEEDS ARISING FROM THE CO-EI  
6 PROPERTY HAVE BEEN BILLED, HAVE ACCRUED, OR HAVE BEEN COLLECTED  
7 AND NOTWITHSTANDING THE FACT THAT THE VALUE OR AMOUNT OF THE  
8 PROPERTY RIGHT OR INTEREST IS DEPENDENT ON THE FUTURE PROVISION  
9 OF SERVICE TO CUSTOMERS BY THE ELECTRIC UTILITY OR A SUCCESSOR OR  
10 ASSIGNEE OF THE ELECTRIC UTILITY.

11 (2) CO-EI PROPERTY DESCRIBED IN A FINANCING ORDER EXISTS  
12 UNTIL ALL CO-EI BONDS ISSUED PURSUANT TO THE FINANCING ORDER ARE  
13 PAID IN FULL AND ALL FINANCING COSTS AND OTHER COSTS OF THE CO-EI  
14 BONDS HAVE BEEN RECOVERED IN FULL.

15 (3) ALL OR ANY PORTION OF CO-EI PROPERTY DESCRIBED IN A  
16 FINANCING ORDER ISSUED TO AN ELECTRIC UTILITY MAY BE TRANSFERRED,  
17 SOLD, CONVEYED, OR ASSIGNED TO A SUCCESSOR OR ASSIGNEE THAT IS  
18 WHOLLY OWNED, DIRECTLY OR INDIRECTLY, BY THE ELECTRIC UTILITY  
19 AND IS CREATED FOR THE LIMITED PURPOSE OF ACQUIRING, OWNING, OR  
20 ADMINISTERING CO-EI PROPERTY OR ISSUING CO-EI BONDS AS  
21 AUTHORIZED BY THE FINANCING ORDER. ALL OR ANY PORTION OF CO-EI  
22 PROPERTY MAY BE PLEDGED TO SECURE CO-EI BONDS ISSUED PURSUANT  
23 TO A FINANCING ORDER, AMOUNTS PAYABLE TO FINANCING PARTIES AND  
24 TO COUNTERPARTIES UNDER ANY ANCILLARY AGREEMENTS, AND OTHER  
25 FINANCING COSTS. EACH TRANSFER, SALE, CONVEYANCE, ASSIGNMENT, OR  
26 PLEDGE BY AN ELECTRIC UTILITY OR AN AFFILIATE OF AN ELECTRIC  
27 UTILITY IS A TRANSACTION IN THE NORMAL COURSE OF BUSINESS FOR



1 PURPOSES OF SECTION 40-5-105 (1)(a).

2 (4) IF AN ELECTRIC UTILITY DEFAULTS ON ANY REQUIRED PAYMENT  
3 OF CHARGES ARISING FROM CO-EI PROPERTY DESCRIBED IN A FINANCING  
4 ORDER, A COURT, UPON APPLICATION BY AN INTERESTED PARTY AND  
5 WITHOUT LIMITING ANY OTHER REMEDIES AVAILABLE TO THE APPLYING  
6 PARTY, SHALL ORDER THE SEQUESTRATION AND PAYMENT OF THE  
7 REVENUE ARISING FROM THE CO-EI PROPERTY TO THE FINANCING  
8 PARTIES. ANY SUCH FINANCING ORDER REMAINS IN FULL FORCE AND  
9 EFFECT NOTWITHSTANDING ANY REORGANIZATION, BANKRUPTCY, OR  
10 OTHER INSOLVENCY PROCEEDINGS WITH RESPECT TO THE ELECTRIC  
11 UTILITY OR ITS SUCCESSORS OR ASSIGNEES.

12 (5) THE INTEREST OF A TRANSFEREE, PURCHASER, ACQUIRER,  
13 ASSIGNEE, OR PLEDGEE IN CO-EI PROPERTY SPECIFIED IN A FINANCING  
14 ORDER ISSUED TO AN ELECTRIC UTILITY, AND IN THE REVENUE AND  
15 COLLECTIONS ARISING FROM THAT PROPERTY, IS NOT SUBJECT TO SETOFF,  
16 COUNTERCLAIM, SURCHARGE, OR DEFENSE BY THE ELECTRIC UTILITY OR  
17 ANY OTHER PERSON OR IN CONNECTION WITH THE REORGANIZATION,  
18 BANKRUPTCY, OR OTHER INSOLVENCY OF THE ELECTRIC UTILITY OR ANY  
19 OTHER ENTITY.

20 (6) A SUCCESSOR TO AN ELECTRIC UTILITY, WHETHER PURSUANT  
21 TO ANY REORGANIZATION, BANKRUPTCY, OR OTHER INSOLVENCY  
22 PROCEEDING OR WHETHER PURSUANT TO ANY MERGER OR ACQUISITION,  
23 SALE, OTHER BUSINESS COMBINATION, OR TRANSFER BY OPERATION OF  
24 LAW, AS A RESULT OF ELECTRIC UTILITY RESTRUCTURING OR OTHERWISE,  
25 SHALL PERFORM AND SATISFY ALL OBLIGATIONS OF, AND HAS THE SAME  
26 DUTIES AND RIGHTS UNDER A FINANCING ORDER AS, THE ELECTRIC UTILITY  
27 TO WHICH THE FINANCING ORDER APPLIES AND SHALL PERFORM THE

1 DUTIES AND EXERCISE THE RIGHTS IN THE SAME MANNER AND TO THE  
2 SAME EXTENT AS THE ELECTRIC UTILITY, INCLUDING COLLECTING AND  
3 PAYING TO ANY PERSON ENTITLED TO RECEIVE THEM THE REVENUES,  
4 COLLECTIONS, PAYMENTS, OR PROCEEDS OF CO-EI PROPERTY DESCRIBED  
5 IN THE FINANCING ORDER.

6 **40-41-111. CO-EI bonds - legal investments - not public debt**

7 **- pledge of state.** (1) BANKS, TRUST COMPANIES, SAVINGS AND LOAN  
8 ASSOCIATIONS, INSURANCE COMPANIES, EXECUTORS, ADMINISTRATORS,  
9 GUARDIANS, TRUSTEES, AND OTHER FIDUCIARIES MAY LEGALLY INVEST  
10 ANY MONEY WITHIN THEIR CONTROL IN CO-EI BONDS. PUBLIC ENTITIES,  
11 AS DEFINED IN SECTION 24-75-601 (1), MAY INVEST PUBLIC FUNDS IN  
12 CO-EI BONDS ONLY IF THE CO-EI BONDS SATISFY THE INVESTMENT  
13 REQUIREMENTS ESTABLISHED IN PART 6 OF ARTICLE 75 OF TITLE 24.

14 (2) CO-EI BONDS ISSUED AS AUTHORIZED BY A FINANCING ORDER  
15 ARE NOT DEBT OF OR A PLEDGE OF THE FAITH AND CREDIT OR TAXING  
16 POWER OF THE STATE, ANY AGENCY OF THE STATE, OR ANY COUNTY,  
17 MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF THE STATE. HOLDERS  
18 OF CO-EI BONDS HAVE NO RIGHT TO HAVE TAXES LEVIED BY THE STATE  
19 OR BY ANY COUNTY, MUNICIPALITY, OR OTHER POLITICAL SUBDIVISION OF  
20 THE STATE FOR THE PAYMENT OF THE PRINCIPAL OR INTEREST ON CO-EI  
21 BONDS. THE ISSUANCE OF CO-EI BONDS DOES NOT DIRECTLY, INDIRECTLY,  
22 OR CONTINGENTLY OBLIGATE THE STATE OR A POLITICAL SUBDIVISION OF  
23 THE STATE TO LEVY ANY TAX OR MAKE ANY APPROPRIATION FOR PAYMENT  
24 OF PRINCIPAL OR INTEREST ON THE CO-EI BONDS.

25 (3) (a) THE STATE PLEDGES TO AND AGREES WITH HOLDERS OF  
26 CO-EI BONDS, ANY ASSIGNEE, AND ANY FINANCING PARTIES THAT THE  
27 STATE WILL NOT:

1 (I) TAKE OR PERMIT ANY ACTION THAT IMPAIRS THE VALUE OF  
2 CO-EI PROPERTY; OR

3 (II) REDUCE, ALTER, OR IMPAIR CO-EI CHARGES, EXCEPT  
4 THROUGH APPLICATION OF THE ADJUSTMENT MECHANISM, THAT ARE  
5 IMPOSED, COLLECTED, AND REMITTED FOR THE BENEFIT OF HOLDERS OF  
6 CO-EI BONDS, ANY ASSIGNEE, AND ANY FINANCING PARTIES, UNTIL ANY  
7 PRINCIPAL, INTEREST, AND REDEMPTION PREMIUM PAYABLE ON CO-EI  
8 BONDS, ALL FINANCING COSTS, AND ALL AMOUNTS TO BE PAID TO AN  
9 ASSIGNEE OR FINANCING PARTY UNDER AN ANCILLARY AGREEMENT ARE  
10 PAID IN FULL.

11 (b) A PERSON WHO ISSUES CO-EI BONDS MAY INCLUDE THE  
12 PLEDGE SPECIFIED IN SUBSECTION (3)(a) OF THIS SECTION IN THE CO-EI  
13 BONDS, ANCILLARY AGREEMENTS, AND DOCUMENTATION RELATED TO THE  
14 ISSUANCE AND MARKETING OF THE CO-EI BONDS.

15 **40-41-112. Assignee or financing party not automatically**  
16 **subject to commission regulation.** AN ELECTRIC UTILITY, ASSIGNEE, OR  
17 FINANCING PARTY THAT IS NOT ALREADY REGULATED BY THE COMMISSION  
18 DOES NOT BECOME SUBJECT TO COMMISSION REGULATION SOLELY AS A  
19 RESULT OF ENGAGING IN ANY TRANSACTION AUTHORIZED BY OR  
20 DESCRIBED IN THIS ARTICLE 41.

21 **40-41-113. Effect of other laws and judicial decisions.** (1) IF  
22 ANY PROVISION OF THIS ARTICLE 41 CONFLICTS WITH ANY OTHER LAW  
23 REGARDING THE ATTACHMENT, ASSIGNMENT, PERFECTION, EFFECT OF  
24 PERFECTION, OR PRIORITY OF ANY SECURITY INTEREST IN OR TRANSFER OF  
25 CO-EI PROPERTY, THE PROVISION OF THIS ARTICLE 41 GOVERNS TO THE  
26 EXTENT OF THE CONFLICT.

27 (2) EFFECTIVE ON THE DATE THAT CO-EI BONDS ARE FIRST ISSUED,

1 IF ANY PROVISION OF THIS ARTICLE 41 IS HELD TO BE INVALID OR IS  
2 INVALIDATED, SUPERSEDED, REPLACED, REPEALED, OR EXPIRES, THAT  
3 OCCURRENCE DOES NOT AFFECT ANY ACTION ALLOWED UNDER THIS  
4 ARTICLE 41 THAT WAS LAWFULLY TAKEN BY THE COMMISSION, AN  
5 ELECTRIC UTILITY, AN ASSIGNEE, A COLLECTION AGENT, A FINANCING  
6 PARTY, A BONDHOLDER, OR A PARTY TO AN ANCILLARY AGREEMENT  
7 BEFORE THE OCCURRENCE, AND ANY SUCH ACTION REMAINS IN FULL FORCE  
8 AND EFFECT.

9 (3) NOTHING IN SUBSECTION (1) OR (2) OF THIS SECTION  
10 PRECLUDES AN ELECTRIC UTILITY FOR WHICH THE COMMISSION HAS  
11 INITIALLY ISSUED A FINANCING ORDER FROM APPLYING TO THE  
12 COMMISSION FOR:

13 (a) A SUBSEQUENT FINANCING ORDER AMENDING THE FINANCING  
14 ORDER AS AUTHORIZED BY SECTION 40-41-105 (4); OR

15 (b) APPROVAL OF THE ISSUANCE OF CO-EI BONDS TO REFUND ALL  
16 OR A PORTION OF AN OUTSTANDING SERIES OF CO-EI BONDS.

17 **40-41-114. Choice of law.** THE LAWS OF THIS STATE GOVERN THE  
18 VALIDITY, ENFORCEABILITY, ATTACHMENT, PERFECTION, PRIORITY, AND  
19 EXERCISE OF REMEDIES WITH RESPECT TO THE TRANSFER OF AN INTEREST  
20 OR RIGHT OR CREATION OF A SECURITY INTEREST IN ANY CO-EI PROPERTY,  
21 CO-EI CHARGE, OR FINANCING ORDER.

22 **40-41-115. Security interests in CO-EI property.** (1) THE  
23 CREATION, PERFECTION, AND ENFORCEMENT OF ANY SECURITY INTEREST  
24 IN CO-EI PROPERTY TO SECURE THE REPAYMENT OF THE PRINCIPAL OF  
25 AND INTEREST ON CO-EI BONDS, AMOUNTS PAYABLE UNDER ANY  
26 ANCILLARY AGREEMENT, AND OTHER FINANCING COSTS ARE GOVERNED BY  
27 THIS SECTION AND NOT BY THE "UNIFORM COMMERCIAL CODE", TITLE 4,

1 TO THE EXTENT OF ANY CONFLICT.

2 (2) THE DESCRIPTION OR INDICATION OF CO-EI PROPERTY IN A  
3 TRANSFER OR SECURITY AGREEMENT AND A FINANCING STATEMENT IS  
4 SUFFICIENT ONLY IF THE DESCRIPTION OR INDICATION REFERS TO THIS  
5 ARTICLE 41 AND THE FINANCING ORDER CREATING THE CO-EI PROPERTY.

6 (3) (a) A SECURITY INTEREST IN CO-EI PROPERTY IS CREATED,  
7 VALID, AND BINDING AS SOON AS ALL OF THE FOLLOWING EVENTS HAVE  
8 OCCURRED:

9 (I) THE FINANCING ORDER THAT DESCRIBES THE CO-EI PROPERTY  
10 IS ISSUED;

11 (II) A SECURITY AGREEMENT IS EXECUTED AND DELIVERED; AND

12 (III) VALUE IS RECEIVED FOR THE CO-EI BONDS.

13 (b) ONCE A SECURITY INTEREST IN CO-EI PROPERTY IS CREATED  
14 UNDER SUBSECTION (3)(a) OF THIS SECTION, THE SECURITY INTEREST  
15 ATTACHES WITHOUT ANY PHYSICAL DELIVERY OF COLLATERAL OR ANY  
16 OTHER ACT. THE LIEN OF THE SECURITY INTEREST IS VALID, BINDING, AND  
17 PERFECTED AGAINST ALL PARTIES HAVING CLAIMS OF ANY KIND IN TORT,  
18 CONTRACT, OR OTHERWISE AGAINST THE PERSON GRANTING THE SECURITY  
19 INTEREST, REGARDLESS OF WHETHER SUCH PARTIES HAVE NOTICE OF THE  
20 LIEN, UPON THE FILING OF A FINANCING STATEMENT WITH THE SECRETARY  
21 OF STATE. THE SECRETARY OF STATE SHALL MAINTAIN A FINANCING  
22 STATEMENT FILED PURSUANT TO THIS SUBSECTION (3)(b) IN THE SAME  
23 MANNER IN WHICH THE SECRETARY MAINTAINS AND IN THE SAME  
24 RECORD-KEEPING SYSTEM IN WHICH THE SECRETARY MAINTAINS  
25 FINANCING STATEMENTS FILED PURSUANT TO ARTICLE 9 OF TITLE 4. THE  
26 FILING OF ANY FINANCING STATEMENT PURSUANT TO THIS SUBSECTION  
27 (3)(b) IS GOVERNED BY ARTICLE 9 OF TITLE 4 REGARDING THE FILING OF

1 FINANCING STATEMENTS.

2 (4) A SECURITY INTEREST IN CO-EI PROPERTY IS A CONTINUOUSLY  
3 PERFECTED SECURITY INTEREST AND HAS PRIORITY OVER ANY OTHER LIEN,  
4 CREATED BY OPERATION OF LAW OR OTHERWISE, WHICH MAY  
5 SUBSEQUENTLY ATTACH TO THE CO-EI PROPERTY UNLESS THE HOLDER OF  
6 THE SECURITY INTEREST HAS AGREED IN WRITING OTHERWISE.

7 (5) THE PRIORITY OF A SECURITY INTEREST IN CO-EI PROPERTY IS  
8 NOT AFFECTED BY THE COMMINGLING OF CO-EI PROPERTY OR CO-EI  
9 REVENUE WITH OTHER MONEY. AN ASSIGNEE, BONDHOLDER, OR  
10 FINANCING PARTY HAS A PERFECTED SECURITY INTEREST IN THE AMOUNT  
11 OF ALL CO-EI PROPERTY OR CO-EI REVENUE THAT IS PLEDGED FOR THE  
12 PAYMENT OF CO-EI BONDS EVEN IF THE CO-EI PROPERTY OR CO-EI  
13 REVENUE IS DEPOSITED IN A CASH OR DEPOSIT ACCOUNT OF THE ELECTRIC  
14 UTILITY IN WHICH THE CO-EI REVENUE IS COMMINGLED WITH OTHER  
15 MONEY, AND ANY OTHER SECURITY INTEREST THAT APPLIES TO THE OTHER  
16 MONEY DOES NOT APPLY TO THE CO-EI REVENUE.

17 (6) NEITHER A SUBSEQUENT ORDER OF THE COMMISSION  
18 AMENDING A FINANCING ORDER AS AUTHORIZED BY SECTION 40-41-105  
19 (4), NOR APPLICATION OF AN ADJUSTMENT MECHANISM AS AUTHORIZED BY  
20 SECTION 40-41-104 (2)(h), AFFECTS THE VALIDITY, PERFECTION, OR  
21 PRIORITY OF A SECURITY INTEREST IN OR TRANSFER OF CO-EI PROPERTY.

22 **40-41-116. Sales of CO-EI property.** (1) (a) A SALE,  
23 ASSIGNMENT, OR TRANSFER OF CO-EI PROPERTY IS AN ABSOLUTE  
24 TRANSFER AND TRUE SALE OF, AND NOT A PLEDGE OF OR SECURED  
25 TRANSACTION RELATING TO, THE SELLER'S RIGHT, TITLE, AND INTEREST IN,  
26 TO, AND UNDER THE CO-EI PROPERTY IF THE DOCUMENTS GOVERNING THE  
27 TRANSACTION EXPRESSLY STATE THAT THE TRANSACTION IS A SALE OR

1 OTHER ABSOLUTE TRANSFER. A TRANSFER OF AN INTEREST IN CO-EI  
2 PROPERTY MAY BE CREATED ONLY WHEN ALL OF THE FOLLOWING HAVE  
3 OCCURRED:

4 (I) THE FINANCING ORDER CREATING AND DESCRIBING THE CO-EI  
5 PROPERTY HAS BECOME EFFECTIVE;

6 (II) THE DOCUMENTS EVIDENCING THE TRANSFER OF THE CO-EI  
7 PROPERTY HAVE BEEN EXECUTED AND DELIVERED TO THE ASSIGNEE; AND

8 (III) VALUE IS RECEIVED.

9 (b) UPON THE FILING OF A FINANCING STATEMENT WITH THE  
10 SECRETARY OF STATE, A TRANSFER OF AN INTEREST IN CO-EI PROPERTY  
11 IS PERFECTED AGAINST ALL THIRD PERSONS, INCLUDING ANY JUDICIAL LIEN  
12 OR OTHER LIEN CREDITORS OR ANY CLAIMS OF THE SELLER OR CREDITORS  
13 OF THE SELLER, OTHER THAN CREDITORS HOLDING A PRIOR SECURITY  
14 INTEREST, OWNERSHIP INTEREST, OR ASSIGNMENT IN THE CO-EI PROPERTY  
15 PREVIOUSLY PERFECTED IN ACCORDANCE WITH THIS SUBSECTION (1) OR  
16 SECTION 40-41-115. THE SECRETARY OF STATE SHALL MAINTAIN A  
17 FINANCING STATEMENT FILED PURSUANT TO THIS SUBSECTION (1)(b) IN  
18 THE SAME MANNER IN WHICH THE SECRETARY MAINTAINS AND IN THE  
19 SAME RECORD-KEEPING SYSTEM IN WHICH THE SECRETARY MAINTAINS  
20 FINANCING STATEMENTS FILED PURSUANT TO ARTICLE 9 OF TITLE 4. THE  
21 FILING OF ANY FINANCING STATEMENT PURSUANT TO THIS SUBSECTION  
22 (1)(b) IS GOVERNED BY ARTICLE 9 OF TITLE 4 REGARDING THE FILING OF  
23 FINANCING STATEMENTS.

24 (2) THE CHARACTERIZATION OF A SALE, ASSIGNMENT, OR  
25 TRANSFER AS AN ABSOLUTE TRANSFER AND TRUE SALE AND THE  
26 CORRESPONDING CHARACTERIZATION OF THE PROPERTY INTEREST OF THE  
27 ASSIGNEE IS NOT AFFECTED OR IMPAIRED BY THE EXISTENCE OR

- 1 OCCURRENCE OF ANY OF THE FOLLOWING:
- 2 (a) COMMINGLING OF CO-EI REVENUE WITH OTHER MONEY;
- 3 (b) THE RETENTION BY THE SELLER OF:
- 4 (I) A PARTIAL OR RESIDUAL INTEREST, INCLUDING AN EQUITY
- 5 INTEREST, IN THE CO-EI PROPERTY, WHETHER DIRECT OR INDIRECT, OR
- 6 WHETHER SUBORDINATE OR OTHERWISE; OR
- 7 (II) THE RIGHT TO RECOVER COSTS ASSOCIATED WITH TAXES,
- 8 FRANCHISE FEES, OR LICENSE FEES IMPOSED ON THE COLLECTION OF CO-EI
- 9 REVENUE;
- 10 (c) ANY RECOURSE THAT THE PURCHASER MAY HAVE AGAINST THE
- 11 SELLER;
- 12 (d) ANY INDEMNIFICATION RIGHTS, OBLIGATIONS, OR REPURCHASE
- 13 RIGHTS MADE OR PROVIDED BY THE SELLER;
- 14 (e) AN OBLIGATION OF THE SELLER TO COLLECT CO-EI REVENUES
- 15 ON BEHALF OF AN ASSIGNEE;
- 16 (f) THE TREATMENT OF THE SALE, ASSIGNMENT, OR TRANSFER FOR
- 17 TAX, FINANCIAL REPORTING, OR OTHER PURPOSES;
- 18 (g) ANY SUBSEQUENT FINANCING ORDER AMENDING A FINANCING
- 19 ORDER AS AUTHORIZED BY SECTION 40-41-105 (4); OR
- 20 (h) ANY APPLICATION OF AN ADJUSTMENT MECHANISM AS
- 21 AUTHORIZED BY SECTION 40-41-104 (2)(h).

22 **SECTION 7. Severability.** If any provision of this act or the

23 application thereof to any person, circumstance, or transaction is held by

24 a court of competent jurisdiction to be unconstitutional or invalid, the

25 unconstitutionality or invalidity does not affect the constitutionality or

26 validity of any other provision of this act or its application or validity to

27 any person, circumstance, or transaction, including, without limitation,



1 the irrevocability of a financing order issued pursuant to this act, the  
2 validity of the issuance of CO-EI bonds, the imposition of CO-EI charges,  
3 the transfer or assignment of CO-EI property, or the collection and  
4 recovery of CO-EI charges. To these ends, the general assembly hereby  
5 declares that the provisions of this act are intended to be severable and  
6 that the general assembly would have enacted this section even if any  
7 provision of this act held to be unconstitutional or invalid had not been  
8 included in the act.

9 **SECTION 8. Appropriation.** (1) For the 2019-20 state fiscal  
10 year, \$171,541 is appropriated to the department of public health and  
11 environment for use by the air pollution control division. This  
12 appropriation is from the general fund. To implement this act, the division  
13 may use this appropriation as follows:

14 (a) \$160,140 for personal services related to stationary sources,  
15 which amount is based on an assumption that the division will require an  
16 additional 1.9 FTE; and

17 (b) \$11,401 for operating expenses related to stationary sources.

18 **SECTION 9. Applicability.** This act applies to conduct,  
19 including power purchase agreements entered into and utility rate-based  
20 property development, occurring on or after the effective date of this act.

21 **SECTION 10. Safety clause.** The general assembly hereby finds,  
22 determines, and declares that this act is necessary for the immediate  
23 preservation of the public peace, health, and safety.